

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
NORTH COUNTY  
MINUTE ORDER**

08CV455W

Date: 03/21/2008

Time: 01:30:00 PM

Dept: N-12

Judicial Officer Presiding: Judge Adrienne A. Orfield

Clerk: Monique Rodriguez

Bailiff/Court Attendant: Ladd, Andrea

ERM:

Reporter: , Nuttall, Terri

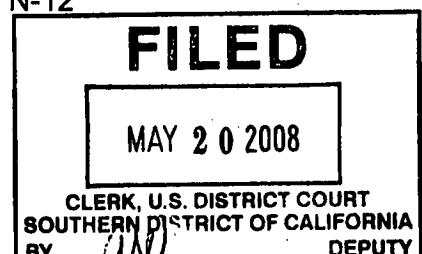
Case Init. Date: 12/26/2007

Case No: 37-2007-00080647-CU-PT-NC Case Title: Petition of Action Foreclosure Services, Inc.

Case Category: Civil - Unlimited

Case Type: Petitions - Other

Event Type: Hearing on Petition

**Appearances:**

Respondent Sherill Johnston present.

All parties submit(s) on the Court's tentative ruling.

The Court confirms the tentative ruling as follows:

**TENTATIVE RULING:**

This court, having received the Notice of Removal of State Action to Federal Court brought by the United States Attorney's Office, hereby effects the requested removal and directs the clerk of the Superior Court to prepare and transmit a copy of all pleadings in this matter to the United States District Court.

IT IS SO ORDERED.

The minutes are the order of the Court. No formal order is required.

The foregoing instrument is a full, true and correct  
copy of the original on file in this office.

Attest: MAR 27 2008

Clerk of the Superior Court of the State of California  
In and for the County of San Diego,By V. Navarro Deputy

V. Navarro



Date: 03/21/2008

MINUTE ORDER

Dept: N-12

Page: 1

Calendar No.:

<b>Superior Court of California County of San Diego</b>  <b>SIGN-IN SHEET</b>	Calendar No.: 0 <b>9</b> <small>Court Use Only</small>
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**CASE:** 37-2007-00080647-CU-PT-NC - Petition of Action Foreclosure Services, Inc.

**EVENT TYPE:** Hearing on Petition

**EVENT DATE/TIME:** 03/21/2008 1:30 pm

**DEPARTMENT:** N-12

**JUDGE:** Adrienne A. Orfield

ATTORNEY/PARTICIPANT NAME	CLIENT NAME	SIGNATURE
HANDLEY, LAUREL I	Action Foreclosure Services, Inc. [PET]	
NACHAND, CHARLES D	Johnston, Sherill [RSP]	<i>Sherill Johnston</i>

1 THE LAW OFFICES OF CHARLES D. NACHAND  
2 Charles D. Nachand (Bar No. 72068)  
3 Demetri Lahanas, (Bar No. 185583)  
4 Richard B. Hudson (Bar No. 140883)  
5 451 South Escondido Boulevard  
6 Escondido, California 92025  
7 (760) 741-2665 (Telephone)  
8 (760) 741-0396 (Facsimile)

9  
10 Attorneys for Sherill Johnston

11  
12  
13  
14  
15  
16  
17  
18  
**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

19 Action Foreclosure Services, Inc. ) Case No.: 37-2007-00080647-CU-PT-NC  
20 Plaintiffs, )  
21 vs. )  
22 and DOES 1 through 20, Inclusive, )  
23 Defendants. )  
24 \_\_\_\_\_ )  
25  
26  
27  
28  
Date: March 21, 2008  
Time: 1:30  
Dept: 12  
Judge: Adrienne Orfield

I, SHERILL JOHNSTON, declare as follows:

1. I was a joint owner and co-tenant of the properties in question.
2. I paid in excess of \$25,142.00 in payments to establish the benefits for the property and to protect the first deed of trust from foreclosure for the benefit of the SPIKERS and DENNY JOHNSTON in this action.
3. But for the payments that I made on the property, the sums due and owing for principal and interest that I paid on behalf of those co-owners would have been taken in the foreclosure.
4. I did not intend to, do not believe I did, and certainly it was not to my benefit to merge any interest that I had with that of DENNY JOHNSTON. My judgment and deed of trust from him were as a result of an adversarial divorce proceeding, were separate interests, and we were not the

1 same marital unit that originally bought and took title.

2       5. MICHAEL and NANCY SPIKER were required to pay the property taxes on the  
3 property as part of the requirements, while I was making additional payments on the property over  
4 and above those noted above. They did not make those payments and so my share was decreased  
5 by an additional portion at the foreclosure which covered the taxes, which has not been calculated  
6 herein.

7       6. DEREK and NICOLE SPIKER were required to provide access, easements and other  
8 benefits to the property to increase its value and allow its sale. They never performed. Further,  
9 DEREK and NICOLE SPIKER did not make payments.

10        7. I was never notified of the IRS lien or the EDD lien until 2007, and after I had ceased  
11 making payments included above.

12           8. I did not know of the SPIKERS' bankruptcy because they falsely represented they did  
13 not know where I was or how to get in touch with me. They have been to my house many times  
14 and sent many payments there. My address at the time we purchased the property until now is and  
15 has been the same, and remains my primary personal residence. Through my counsel we notified  
16 the trustee of the misrepresentations concerning this property, the liens, its value, and notification  
17 to myself. I was informed the trustee chose not to re-open the matter and had no interest in the  
18 SPIKERS, the property or the interests in any of those matters, and the abandonment would  
19 remain.

20 Executed this 6<sup>th</sup> day of March, 2008 at Escondido, California. I declare under penalty of  
21 perjury that the foregoing is true and correct.

  
Sherill Johnston

1 KAREN P. HEWITT  
2 United States Attorney

3 TOM STAHL, California State Bar No. 78291  
4 Assistant United States Attorney  
5 Chief, Civil Division

6 LAUREN M. CASTALDI  
7 Trial Attorneys, Tax Division  
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F I L E D  
Clerk of the Superior Court

MAR 11 2008

By: L. MELIN-ALVAREZ, Deputy

14 Attorneys for the United States of America

15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF SAN DIEGO, NORTHERN DIVISION

17 IN RE: }  
18 VACANT LAND LOCATED IN SAN DIEGO } Case No. 37-2007-00080647-CU-PT-NC  
19 COUNTY APNS 279-150-22 AND 280-140-10 )  
20 } NOTICE OF REMOVAL OF STATE  
21 } ACTION TO FEDERAL DISTRICT  
22 } COURT  
23 }  
24 }

25 TO: CLERK OF COURT

26 PLEASE TAKE NOTICE that on or about the 10th day of March, 2008, counsel for the United States  
27 filed in the Office of the Clerk of the United States District Court for the Southern District of California,  
28 Edward J. Schwartz U.S. Courthouse, 940 Front Street, San Diego, CA 92101-8900, a Notice of Removal  
effecting the removal of the above-captioned action from the above-entitled court to the United States District  
Court.

This notice is filed with this Court pursuant to 28 U.S.C. § 1446. Pursuant to 28 U.S.C. § 1446(d), once the Notice of Removal is filed in the District Court, this Court "shall effect the removal" and "shall proceed no further unless and until the case is remanded" to this Court by the United States District Court.

The Clerk of this Court should prepare and transmit to the United States District Court Clerk a copy of all relevant pleadings contained on file in this matter.

DATED this 7th day of March, 2008.

KAREN P. HEWITT  
United States Attorney

**TOM STAHL**  
Assistant United States Attorney  
Chief, Civil Division

LAUREN M. CASTALDI  
Trial Attorneys, Tax Division  
U.S. Department of Justice  
Attorneys for the United States of America

1 KAREN P. HEWITT  
2 United States Attorney

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4 Assistant United States Attorney  
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Clerk of the Superior Court

MAR 11 2008

By: L. MELIN-ALVAREZ, Deputy

9 Attorneys for the United States of America

10  
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SAN DIEGO, NORTHERN DIVISION  
13

14 IN RE: }  
15 VACANT LAND LOCATED IN SAN DIEGO } Case No. 37-2007-00080647-CU-PT-NC  
16 COUNTY APNS 279-150-22 AND 280-140-10 }  
17 } CERTIFICATE OF SERVICE

18 I HEREBY CERTIFY that service of the UNITED STATES' NOTICE OF REMOVAL, has been  
19 made this 7th day of March, 2008, by United States' Mail to:

21 Charles D. Nachad  
22 The Law Offices of Charles D. Nachad  
451 South Escondido Blvd.  
23 Escondido, CA 92025  
Counsel for Sherrill Johnston

24 Employment Development Department  
25 800 Capital Mall MIC 92 H  
Sacramento, CA 94230

Denny Johnston  
c/o Taylor Pipeline, Inc.  
2625 Las Palmas Avenue  
Escondido, CA 92025

Denny Johnston  
44913 Silver Rose Street  
Temecula, CA 92592-5541

1      Derek Spiker  
 2      1855 Rainbow Valley Blvd  
 2      Fallbrook, CA 92028

Michael Spiker  
 2625 Las Palmas Avenue  
 Escondido, CA 92025

3      Derek Spiker  
 4      19773 Ramona Trails Drive  
 4      Ramona, CA 92065

Nancy Spiker  
 2625 Las Palmas Avenue  
 Escondido, CA 92025

5      Michael Spiker  
 6      1855 Rainbow Valley Blvd  
 6      Fallbrook, CA 92028

Denny Johnston  
 1855 Rainbow Valley Blvd.  
 Fallbrook, CA 92028

7      Nancy Spiker  
 8      1855 Rainbow Valley Blvd  
 8      Fallbrook, CA 92028

Nicole Spiker  
 1855 Rainbow Valley Blvd.  
 Fallbrook, CA 92028

9      Nicole Spiker  
 10     19773 Ramona Trails Drive  
 10     Ramona, CA 92065

TARGET NATIONAL BANK  
 c/o Eskanos & Adler  
 Donald R. Stebbins/Janet L. Brown  
 Kurtiss A. Jacobs/Jerome M. Yalon  
 218950/84204  
 2325 Clayton Road  
 Concord, CA 94520

11     Nicole Spiker  
 12     c/o THREE D ELECTRIC  
 12     1855 Rainbow Valley Blvd  
 12     Fallbrook, CA 92028

STATE OF CALIFORNIA  
 Employment Development Department  
 Lien Group, MIC 92G  
 P.O. Box 826880  
 Sacramento, CA 94280-0001

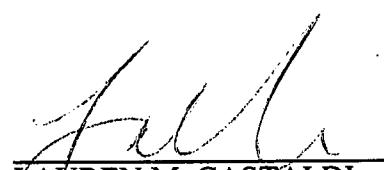
13     Denny Johnston  
 14     2625 Las Palmas Avenue  
 14     Escondido, CA 92025

INDEPENDENT ELECTRIC SUPPLY, INC.  
 c/o CRF Solutions  
 P.O. Box 1389  
 Simi Valley, CA 93065

15     Derek Spiker  
 16     2625 Las Palmas Avenue  
 16     Escondido, CA 92025

M and D ELECTRIC INC.  
 A California Corporation  
 19773 Ramona Trails  
 Ramona, CA 92065

17     Nicole Spiker  
 18     2625 Las Palmas Avenue  
 18     Escondido, CA 92025



LAUREN M. CASTALDI  
 Trial Attorney, Tax Division  
 U.S. Department of Justice

Attorney for the United States of America

21

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1 THE LAW OFFICES OF CHARLES D. NACHAND  
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7 (760) 741-0396 (Facsimile)

NOTICE OF HEARING - APRIL 10, 1968  
2200 MAR - 6 PW 3:45

**Attorneys for Respondent Sherill Johnston**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

IN RE:

VACANT LAND LOCATED in SAN  
DIEGO COUNTY APNS 279-150-22 AND  
280-140-10

Case No.: 37-2007-00080647-CU-PT-NC

**RESPONSE TO PETITION, CLAIMS,  
PRIORITY LIENS AND REQUEST FOR  
PAYMENT BY RESPONDENT**

Date: March 21, 2008

Time: 1:30

Dept: 12

Judge: Adrienne Orfield

**Response to Petition, Identification of Priorities, Claims and Request for Payment by  
Respondent SHERILL JOHNSTON.**

## BACKGROUND

This was an attempt by six people to purchase raw land and develop the same. It ended with a foreclosure by the first deed of trust, resulting in the excess proceeds which are before this court. Respondent herein, SHERILL JOHNSTON (herein after JOHNSTON) has an ownership claim, a secured claim (deed of trust and judgement) and has a priority subrogated priority lien and claim for payment on behalf of all owners under the foreclosed, purchase money first deed of trust.

The property was purchased by Respondent JOHNSTON with her then husband DENNY JOHNSTON (now her ex husband - dissolution filed 4/04; entered 3/05). Together they own a one-third interest. The co-purchasers of the property were MICHAEL and NANCY SPIKER as to one-third, and DERRICK AND NICOLE SPIKER as to one-third. (DERRICK is the son of

1           The foreclosed deed of trust in favor of DAVIS was secured by two of the original three  
2 parcels (120 and 160 acres). The overall property (160, 120 and 80 acres) did not have legal  
3 access. The parties purchased 20 acres with access from the public road, granted themselves access  
4 to the remaining parcels to create benefit for themselves and the parcels and then resold the 20  
5 acres. Respondent JOHNSTON provided the funds for the access benefitting all parties and  
6 parcels, and it was acknowledged and agreed that she would be reimbursed from the proceeds of  
7 the remaining properties.

8           As time went on, the SPIKERS decreased their contribution of payments made on the first  
9 trust deed and claiming that they were paying the property taxes. The property taxes were NOT  
10 paid by SPIKERS, it was a false representation. That tax obligation was not paid by SPIKERS or  
11 the other owners, including JOHNSTON, prior to the foreclosure sale on the first deed of trust.

12           Those payments and that representation of payments were by MICHAEL and NANCY  
13 SPIKER. Toward mid to late 2005 no further payments were made by SPIKER at all. JOHNSTON  
14 advanced the funds to protect the property and the first deed of trust while the parties attempted to  
15 sell the property. SPIKERS actually signed a listing and promoted the sale of the property in  
16 acceptance and reliance upon Respondent JOHNSTON'S payment to slow down foreclosure and to  
17 preserve the property.

18           Unbeknownst to JOHNSTON, MICHAEL AND NANCY SPIKER incurred state and  
19 federal tax obligations that are completely unrelated to the property. Those tax obligations became  
20 liens upon the property (EDD claimant January of 2006; IRS June of 2006). SPIKERS did not  
21 disclose or tell JOHNSTON about the liens and JOHNSTON received no information concerning  
22 the same until 2007.

23           MICHAEL AND NANCY SPIKER filed a bankruptcy proceeding. In the bankruptcy  
24 proceeding they falsely represented that they did not know the location of SHERILL JOHNSTON  
25 (her residence address has not changes since the 90's thru the present - SPIKERS have been to the  
26 house on many occasions and sent multiple payments to the address). They did not provide any  
27 notice to Respondent JOHNSTON of their bankruptcy; and made false representations to the  
28 bankruptcy court about their interest in the property as well as the value of the properties and the

1 liens on the property etc.. The bankruptcy trustee, primarily because of the liens of the EDD and  
 2 the IRS and the lack of other resources of the SPIKERS expressed no interest in pursuing the  
 3 misrepresentations or the property. The trustee abandoned any interest therein.

4 The EDD and the IRS are liens upon the resulting interest of MICHAEL and NANCY  
 5 SPIKER. They have not foreclosed their liens nor assumed any interest in the title or ownership of  
 6 the property and their liens are solely upon the resultant rights of MICHAEL and NANCY  
 7 SPIKER. (The EDD and IRS do not have ownership rights.)

8 The properties went into foreclosure and each of the SPIKERS were notified of the  
 9 foreclosure proceedings. The SPIKERS also contacted JOHNSTON, through the realtor, and ,made  
 10 inquiry about possible sales, the impact of the foreclosure, etc. When the sale was completed there  
 11 were excess proceeds and all parties were notified. Only Respondent JOHNSTON, the IRS and the  
 12 EDD submitted claims to the foreclosure company. No other claims were made as required by  
 13 statute and the only valid claims in the inter pleader action that may be filed are Respondent  
 14 JOHNSTON (SHERIILL JOHNSTON), the EDD and the IRS. However under no interpretation,  
 15 scenario or circumstance are their sufficient funds available to pay the balance of the EDD/IRS  
 16 claims. The IRS is second in time, recorded in excess of six months after the EDD claims on the  
 17 MICHAEL and NANCY SPIKER interests. However, the IRS claims to have assessed prior to the  
 18 assessment by the EDD and also asserts that date of assessment is controlling rather than  
 19 recordation. The EDD and IRS claims were recorded after payment and obligation to  
 20 JOHNSTON. The IRS is not a player in this particular foreclosure although their lien remains in  
 21 place on the surviving 80 acres as does the remaining balance of the EDD after partial payment  
 22 hereunder.

23 **II**

24 **CURRENT STATUS**

25 As noted above the foreclosing entity properly followed the statute and required that proper  
 26 statutory claims be made on the excess proceeds. All potential claimants were notified. The trustee  
 27 sale guarantee failed to note the recorded interest of respondent JOHNSTON in a judgement  
 28 against the interest of DENNY JOHNSTON recorded in May of 2005 more than seven months

1 prior to the EDD claim and a year prior to the IRS claim. However that judgment was proceeded by  
 2 a deed of trust on the DENNY JOHNSTON interest recorded in February 2005. As the proceeds do  
 3 not remotely approach the amount of either the deed of trust or the judgement and both of the  
 4 obligations are against the interest of DENNY JOHNSTON and establish JOHNSTON'S claims  
 5 and priorities on separate JOHNSTON interest (not the MICHAEL and NANCY SPIKER interest) the  
 6 mistake of the title guarantee does not appear to be of significance at this time.

7 JOHNSTON has protected the interest of all parties and has a priority lien for the  
 8 mandatory advances. The advances by the co-tenant, the priority by segregation of the advances  
 9 and payment as well as the provisions and policies of interest, equitable interest in the property and  
 10 un just enrichment provide that JOHNSTON will be reimbursed from the proceeds of the property  
 11 prior to any distribution to the owners.

12 JOHNSTON'S priority is established by the payments made under two circumstances:

- 13       (1)     JOHNSTON'S payments made prior to any recorded junior lien interest (i.e. EDD  
                  or IRS) for the benefit of all, increasing the value of the property, protecting the  
                  property interests of all priority interests. (If not so paid, the foreclosure would have  
                  required and collected them as against the parties);
- 14       (2)     Where the advances and payments for the protection of the property are made for  
                  the benefit of all, and made without actual knowledge of the subsequent junior lien  
                  interest (EDD and IRS claims are constructive notice not actual notice), then the  
                  advances remain a priority lien on the property.

21       In an abundance of caution, Respondent JOHNSTON notes that the priority lien applies  
 22 not just to the additional interest of DENNY JOHNSTON, but also to the ownership interests of  
 23 DEREK and NICOLE SPIKER. Those priority liens require the payment of those funds from the  
 24 one-third interest of DEREK and NICOLE SPIKER prior to any allocation or distribution of excess  
 25 funds to the remaining claimants' interests. Therefore, even if there were some issue concerning  
 26 actual knowledge (there is none, there was no actual knowledge, neither the EDD, the IRS,  
 27 SPIKERS or any of them, ever advised JOHNSTON of their liens or obligations). JOHNSTON  
 28 has a priority distribution right and claim on the ownership interest of DEREK and NICOLE

1 SPIKER. As liened, identified and sought by JOHNSTON, this claim would cause the priority  
 2 distribution before distribution of excess proceeds to the title holders. JOHNSTON would  
 3 therefore receive the priority distribution from ownership interests whether from all parties or from  
 4 the non-liened property as a priority distribution of an ownership interest before there can be, - by  
 5 definition - "excess proceeds."

6 That priority payment made by JOHNSTON is the sum of Twenty-Five Thousand, One  
 7 Hundred and Forty-One Dollars and Sixty-Nine Cents (\$25,141.69). That priority lien bears  
 8 interest at legal rate of ten percent (10%). Using the simple calculation after March 21, 2006 to  
 9 March 21, 2008, that is twenty-four (24) months or a total of Five Thousand Twenty-Eight Dollars  
 10 and Thirty-Four Cents (\$5,028.34) for a grand total of Thirty Thousand, One Hundred Seventy  
 11 Dollars and Three Cents (\$30,170.03).

12 The remaining balance of funds Forty-Five Thousand, Nine Hundred Seventy-Two Dollars  
 13 and Fifty-Eight Cents (\$45,972.58) would thereafter be available for distribution. JOHNSTON  
 14 holds her one-sixth and the DENNY JOHNSTON one-sixth. The EDD holds the claims under the  
 15 MICHAEL and NANCY SPIKER one-sixth each (also a total of one-third). The DERRICK and  
 16 NICOLE SPIKER interests did not make or assert the required claim to Action Foreclosure, and  
 17 have no right to any of the excess proceeds. Pursuant to Civil Code Sections 2924(k)(a)(1 and 2)  
 18 and 2924(j)(a)(4)(C), Action Foreclosure notified all parties of the requirement under the Code  
 19 that they make a demand in writing within 30 days of the date of sale and notification. As noted  
 20 under oath by the Interpleader herein, only the IRS, the EDD and JOHNSTON made such  
 21 demands. All other parties are clearly estopped and have waived any rights to assert any additional  
 22 claim (Civil Code Section 2924(j)(a)(4)(c)).

23 As a result thereof the EDD/IRS (as between them) and Respondent JOHNSTON split the  
 24 remaining funds half and half or Twenty-Two Thousand, Nine Hundred Eighty-Six Dollars and  
 25 Twenty-Nine Cents (\$22,986.22) to JOHNSTON and the balance to the IRS/EDD as determined  
 26 between them.

27 ////

28 ////

III

LEGAL SUPPORT

3       A. Merger. The Petition raises an issue of merger which is easily disposed of. Additionally  
4 the position of the IRS/EDD is between them, leaving the primary points of authority on the  
5 question of priorities and allocations between JOHNSTON and whichever tax entity establishes its  
6 priority as between them.

7 Case law states that merger requires a “unity” of title.... in any event, mere unity of  
8 possession is not enough. Further, the ownership of the two estates must be coextensive and equal  
9 in validity, quality and all other circumstances of right, *Beyer v. Tahoe Sands Resort*, (2005) 129  
10 Cal. App. 4<sup>th</sup> 1458 at 1473 and 1474.

In this case we do not have this. JOHNSTON has an undivided one-third interest segregated by her dissolution of marriage into a one-sixth interest. She then holds a deed of trust and a judgment lien against the one-sixth of DENNY JOHNSTON. They are not coextensive nor the same. However the doctrine of merger is equitable and the case law clearly establishes that the merger does not occur unless it was the intent of the person having the multiple interests and merger must be in her best interest.

17 A merger does not always follow the union of a greater and lesser estate in the same  
18 ownership. The question is one of intention, actual or presumed, of the person in whom the  
19 interests are united...., *Ito v. Schiller*, 1931) 213 Cal. 632; *Strike v Trans-West Discount Corp.*,  
20 (1979) 92 Cal. App. 3<sup>rd</sup> 735 at 743).

21        “Equity will prevent or permit a merger, as will best subserve the purposes of justice, and  
22 the actual and just intent of the parties.... in the absence of an expression of intention, if the  
23 interests of the person in whom the several estates have united, as shown from all circumstances,  
24 would be best subserved by keeping them separate, the intent to do so will ordinarily be implied,  
25 Jamison v. Hayward (1895), 106 Cal. 682; Strike v. Trans West, supra, at 743. The same rules  
26 clearly establishing that under equity no merger occurs without essentially identical and complete  
27 unity of interest plus an intent to do so that is beneficial to the party with the multiple issues as  
28 fully identified and set forth in *First American Title Ins. Co. v. U.S.* (1988) 848 F.2d 969 at 971

1 where the Federal Court cites *Strike, supra; ITQ, supra* and *Jamison, supra*. Clearly in our instance  
 2 there is no merger of SHERILL JOHNSTON's interests and she maintains her separate ownership  
 3 interest, from her deed of trust and judgement against DENNY JOHNSTON and his interests.

4       B. IRS. The aforementioned *First American Title Insurance* Federal case also takes care of  
 5 the IRS questions. This is a Federal case in which the Title Insurance Co. and bank brought an  
 6 action to maintain the banks lien as senior over the IRS tax lien despite the fact that there had been  
 7 a foreclosure on the property and in fact the same occurred without notice to the IRS.

8           The equitable laws do apply to property issues. It is noted here and below the equitable lien  
 9 of SHERILL JOHNSTON as a co-tenant advancing funds for the protection of security establishes  
 10 the identified lien.

11           Subsequent priority of that lien is further established by the federal law itself. As noted in  
 12 the First American, Supra, where the under lying equitable lien survived the foreclosure sale and  
 13 preexisted the recordation of the tax lien it has priority because it preexisted and was established  
 14 prior to the recordation of the tax lien. This may be irrelevant and handled below if the EDD lien is  
 15 in advance of the IRS lien. If established, the EDD's asserted obligation exceeds the funds  
 16 available on the MICHAEL and NANCY SPIKER interests and eliminates and predates any IRS  
 17 claim. If not, then the foregoing applies to the IRS.

18       C. EDD (also IRS). The updated Miller and Star California Real Estate (October 2007)  
 19 establishes Respondent JOHNSTON's equitable lien, created as a co-tenant has priority over the  
 20 junior lien of the EDD under the doctrine of EQUITABLE SUBROGATION.

21           Miller and Star California Real Estate 3d updated 2007 in Chapter 11, deals with recording  
 22 and priorities. Section 11:107 establishes that advances by a co-tenant are in fact secured by a lien.  
 23 It specifically relates to Respondent JOHNSTON who is a co-tenant with the other five listed  
 24 owners. The EDD lien is a secondary attachment to the resultant rights in MICHAEL and  
 25 NANCY SPIKER. JOHNSTON is entitled to a lien and not only does the lien encumber the  
 26 interest of the co-tenants, the lien can be foreclosed in order to recover the amounts advanced.  
 27 (Miller & Starr, *supra* at 11;107; Section 12; 10).

28           Miller and Star deals directly with our situation whether are "junior" liens. Because

1 JOHNSTON payments were on the senior lien identified and preexisting to the junior lien (the  
 2 purchase money obligations on the property and the advances thereon prior to the recordation of  
 3 the EDD junior lien specifically have and create a lien to secure repayment that has priority over  
 4 the EDD junior lien) . JOHNSTON had no right of forcing an assignment from the senior lien  
 5 under the same rules. She is simply subrogated to the original, previous first/purchase money deed  
 6 of trust, and has priority as to her lien, based upon advances and payments made prior to and in  
 7 support of the property and the first deed of trust. Equitable subrogation is an exception to the  
 8 general rule of priorities. It is available not only prior to the recordation of junior liens but where a  
 9 junior lien holder has not provided actual notice but only constructive notice (i.e EDD lien  
 10 recordation). (See Civil Code Sections 2876, 2903, and 2904; Miller and Starr, *supra*, Chapter 11  
 11 Sec. 11;106). (As to the IRS, see also *In Re Destro* (9<sup>th</sup> Cir. 1982) 675 F.2d. 1037 at 1040 and  
 12 1041.)

13 The doctrine of equitable subrogation is to be applied liberally, *Continental Cas. Co. v.*  
 14 *Phoenix Construction Co.* (1956) 46 Cal App. 2<sup>nd</sup> 423 at 434.

15 The doctrine in its application is not only liberal but is based upon a balancing of the  
 16 equities and is applicable even as against constructive notice established by junior lien holders (i.e.  
 17 EDD/IRS). (See *Smith v. State Savings Loan Associations* (1985) 175 Cal App. 3<sup>rd</sup> 1092 at 1098-  
 18 1099; Miller and Star, *supra* 11;106). Equitable subrogation is based on a balancing of the  
 19 equities and the establishments of the rights of the parties, *Deiden v. Schmidt* (2003) 104 Cal App.  
 20 4<sup>th</sup> 645 at 654 *et seq.* Here, JOHNSTON was in the process of attempting to establish and preserve  
 21 the benefits and rights of the parties. The EDD benefits because of the protection of the property  
 22 (including the interest of SPIKER), and because equity establishes that JOHNSTON payments  
 23 would otherwise have come out of the senior lien foreclosure on an equal basis.

24 In fact, a case example provided by Miller and Star is directly on all fours and on point.  
 25 Although it reaches back to a hundred year old case (*Schaffer v. McCloskey*, (1894) 101 Cal App.  
 26 576 at 580 to 581) It is remarkably on point. It also contains in the third edition up to the October  
 27 2007 updates in Miller & Starr, the preeminent authority on real estate law in the State of  
 28 California.

1       The example provided deals with a co-tenancy where "a junior lien" was an encumbrance  
 2 only on the interests of the defaulting co-tenant (EDD as in our case - EDD on the MICHAEL and  
 3 NANCY SPIKER interest) the other co-tenant made payments for both on the debts secured by a  
 4 senior lien (as in our case JOHNSTON paid DAVIS, the senior lien) the equitable lien was  
 5 established and equitable subrogation applied. It was particularly noted that the junior lien holder  
 6 was nor prejudiced by the preservation of the lien right and further, that the paying tenant never  
 7 had an intent to benefit the junior lien holder by improving their equity position. (And she could  
 8 not have as she did not know they existed) (See *Schaffer, supra*, and Miller and Star, *supra*, at  
 9 11;107).

10      The circumstances are supportive and spelled out in the more recent case of *Snider v.*  
 11 *Basinger*, (1976) 61 Cal App. 3<sup>rd</sup> 819 at 823-824.

12      The *Snider* Court goes further and specifically identifies that a reconveyance of the first  
 13 deed of trust places the plaintiff (Respondent JOHNSTON in this case) in a superior position to  
 14 subsequent junior liens with a priority senior to the that of those junior encumbrancers. (*Snider*,  
 15 *supra*, at 825) Pursuant to *In Re Destro* and others, the IRS application is within the confines of  
 16 the foregoing.

17      Respondent JOHNSTON is entitled to priority distribution of \$30,170.03. Thereafter the  
 18 remaining proceeds must be split according to the one-third ownership held by JOHNSTON in the  
 19 form of her own ownership and secured rights of DENNY JOHNSTON in equality and equal  
 20 proportion to the one-third residual interest controlled by the EDD on the MICHAEL and NANCY  
 21 SPIKER interests. Since the two one-third interests are equal and after priority for the equitable  
 22 subrogated liens, the remaining proceeds are split equally.

23      The Court's disposition of proceeds should be Fifty-Three Thousand, One Hundred Fifty-  
 24 Six Dollars and Thirty-Two Cents (\$53,156.32 to JOHNSTON, and Twenty-Two Thousand, Nine  
 25 Hundred Eighty-Six Dollars and Twenty-Nine Cents (\$22,986.29) to the EDD on the MICHAEL  
 26 and NANCY SPIKER interest. If their is interest on the proceeds, it should be split in direct  
 27 proportion to those interests or seventy (70%) percent to JOHNSTON and thirty (30%) percent to  
 28 the EDD/IRS.

V

## **SUMMARY**

JOHNSTON is the primary claimant with a priority distribution which is less than the total of funds available. She then becomes a co equal claimant with the next lien holder on a claimed interest (MICHAEL and NANCY SPIKER) in equal shares. The completion and determination thereof is a matter of arithmetic.

The law as cited and noted hereinabove is clear. It goes back over 100 years, and even in current treatise authority because of the direct clarity of the positions.

This is an equitable lien issue. In this case JOHNSTON has been the sole and only responsible person out of the six who originally entered into the arrangement. DEREK and NICOLE SPIKER have done nothing. They did not undertake the obligations they agreed to at the time to obtain other access and easements to the property; they did not make proper payments; and there was a small, minor judgment against them that did not act. MICHAEL and NANCY SPIKER and DENNY JOHNSTON both filed bankruptcies and attempted to either misrepresent and conceal assets, obligations and/or preclude or prevent notice to SHERILL JOHNSTON, or all of those things in a disingenuous and inequitable fashion. DENNY JOHNSTON has failed to pay SHERILL JOHNSTON monies that he received, and she had both a deed of trust and judgment against him. Further, there is another obligation for his outstanding back unpaid child support for thousands and thousands of dollars in favor of SHERILL JOHNSTON. All of the equities cry out for SHERILL JOHNSTON to be reimbursed for attempting to protect and preserve an asset which ultimately, because of the marketplace, because of the failures of the co-tenants, and because of their own inappropriate actions (various judgments against them), have left Respondent SHERILL JOHNSTON with no recourse other than through this property. The subsequent lien of the EDD/IRS is strictly a resultant lien and attaches only to the left over interests of MICHAEL and NANCY SPIKER. The fact that there remains some portion of the DEREK and NICOLE SPIKER

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28 | Page

1 interests after the priority distribution to JOHNSTON actually creates a windfall for the EDD  
2 despite the substantial pre-existing, priority lien of JOHNSTON.

3 It is respectfully requested that the Court order the distribution of funds as set forth above.

4 Respectfully submitted.

5 Dated: March 5, 2008

LAW OFFICES OF CHARLES NACHAND

6  
7 By: 

Charles D. Nachand, Attorney for  
SHERILL JOHNSTON

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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>		<b>FOR COURT USE ONLY</b>
STREET ADDRESS: 325 S. Melrose		
MAILING ADDRESS: 325 S. Melrose		
CITY AND ZIP CODE: Vista, CA 92081		
BRANCH NAME: North County		
TELEPHONE NUMBER: (760) 940-4581		
PLAINTIFF(S): Action Foreclosure Services, Inc.		
DEFENDANT(S):		
PETITION OF ACTION FORECLOSURE SERVICES, INC.		02/02/2008
<b>NOTICE OF CASE REASSIGNMENT</b>		CASE NUMBER: 37-2007-00080647-CU-PT-NC

Filed : 12/13/2007

**EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED**

to Department N-12

due to the following reason: Re-assigned for all purposes due to judicial move

All subsequent documents filed in this case must include the name of the new judge and the department number on the first page immediately below the number of the case. All counsel and self-represented litigants are advised that Division II of the Superior Court Rules is strictly enforced. It is the duty of each plaintiff (and cross-complainant) to serve a copy of this notice with the complaint (and cross-complaint).

**ORIGINAL**

1 JOHN D. DUNCAN (CA SBN 179560)  
 2 PETER J. SALMON (CA SBN 174386)  
 2 LAUREL I. HANDLEY (CA SBN 231249)  
 3 PITE DUNCAN, LLP  
 3 525 E. Main Street  
 4 P.O. Box 12289  
 4 El Cajon, CA 92022-2289  
 Telephone: (619) 590-1300  
 5 Facsimile: (619) 590-1385

FILED  
NORTH COUNTY DIVISION  
FEB 13 AM 11:38

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

6 Attorneys for Petitioner Action Foreclosure Services, Inc.

7

8 SUPERIOR COURT OF CALIFORNIA  
 9 COUNTY OF SAN DIEGO - NORTH COUNTY

10 IN RE: Case No.: 37-2007-00080647-CU  
 11 JULIAN ROAD EAST, HWY. 78.  
 12 PROOF OF SERVICE

13 I, the undersigned, declare: I am, and was at the time of service of the papers herein referred  
 to, over the age of 18 years, and not a party to this action. My business address is 525 East Main  
 Street, El Cajon, California 92020.

14 On 2-11-, 2008, I served the following documents:

15 1. NOTICE OF CASE REASSIGNMENT

16 on the parties in this action addressed as follows:

17 Denny Johnston  
 C/O Taylor Pipeline, Inc.  
 19 2625 Las Palmas Avenue  
 Escondido, CA 92025

Denny Johnston  
 44913 Silver Rose Street  
 Temecula, CA 92592

20 Derek Spiker  
 21 1855 Rainbow Valley Blvd.  
 Fallbrook, CA 92028

Derek Spiker  
 19773 Ramona Trails Drive  
 Ramona, CA 92065

23 Michael Spiker  
 1855 Rainbow Valley Blvd.  
 Fallbrook, CA 92028

Nancy Spiker  
 1855 Rainbow Valley Blvd.  
 Fallbrook, CA 92028

25 Nicole Spiker  
 26 19773 Ramona Trails Drive  
 Ramona, CA 92065

Sherill Johnston  
 2625 Las Palmas Avenue  
 Escondido, CA 92025

28 Nicole Spiker  
 C/O Three D Electric  
 1855 Rainbow Valley Blvd  
 Fallbrook, CA 92028

Denny Johnston  
 2625 Las Palmas Avenue  
 Escondido, CA 92025

1      Derek Spiker 2      2625 Las Palmas Avenue 2      Escondido, CA 92025	Nicole Spiker 2625 Las Palmas Avenue Escondido, CA 92025
3	Michael Spiker 2625 Las Palmas Avenue Escondido, CA 92025
4	Nancy Spiker 2625 Las Palmas Avenue Escondido, CA 92025
5	
6	Sherill Lynne Johnston 2625 Las Palmas Avenue Escondido, CA 92025
7	Denny Johnston 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
8	
9	Sherill Johnston 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
10	
11	Target National Bank C/O Eskinos & Adler 12     Donal R. Stebbins/Janet L. Brown Kurtiss A. Jacobs/Jerome M. Yalon 13     218950/84204 2325 Clayton Road 14     Concord, CA 94520
15	State of California Employment Development Department Lien Group, MIC 92G P.O. Box 826880 Sacramento, CA 94280-0001
16	
17	Internal Revenue Service S:C:F:TS:W:AREA 14:GROUP 15 24000 Avila Road, M/S 5905 Laguna Niguel, CA 92677
18	Internal Revenue Service Stop 5021/ Advisory Unit 1/RM 4062 300 N. Los Angeles Street Los Angeles, CA 90012 Attn: Technical Support Territory Mgr.
19	
20	Internal Revenue Service Post Office Box 145585 Stop 8420G Cincinnati, OH 45250
21	
22	Independent Electric Supply, Inc. C/O CRF Solutions Post Office Box 1389 Simi Valley, CA 93062
23	M and D Electric Inc. A California Corporation 19773 Ramona Trails Ramona, CA 92065
24	Laguna Nigel District/Area 16 Internal Revenue Service 24000 Avila Road, Stop 5905 Laguna Nigel, CA 92677 Attn: Technical Support Territory Mgr Advisor: K. Ripp 702-868-5063
25	
26	Charles D. Nachand The Law Offices of Charles D. Nachand 447 South Escondido Blvd. Escondido, CA 92025
27	Charles D. Nachand The Law Offices of Charles D. Nachand 451 South Escondido Boulevard Escondido, CA 92025-4813
28	Employment Development Department 800 Capitol Mall Mic 92 H Sacramento, CA 94230

1     **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above. I am  
2    readily familiar with the firm's practice of collection and processing correspondence for  
3    mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course  
4    of business. I am aware that on motion of party served, service is presumed invalid if postal  
5    cancellation date or postage meter date is more than one day after date of deposit for mailing  
6    in affidavit.

7     **BY CERTIFIED MAIL:** I placed a true copy in a sealed envelope addressed as indicated  
8    above via certified mail, return receipt requested.

9     **BY FACSIMILE:** I personally sent to the addressee's facsimile number a true copy of the  
10   above-described document(s). I verified transmission with a confirmation printed out by the  
11   facsimile machine used. Thereafter, I placed a true copy in a sealed envelope addressed and  
12   mailed as indicated above.

13    **BY FEDERAL EXPRESS:** I placed a true copy in a sealed Federal Express envelope  
14   addressed as indicated above. I am familiar with the firm's practice of collection and  
15   processing correspondence for Federal Express delivery and that the documents served are  
16   deposited with Federal Express this date for overnight delivery.

17   I declare under penalty of perjury under the laws of the State of California that the foregoing  
18   is true and correct.

19   Executed on 2-11-, 2008, at El Cajon, California.

20     
21   ROSALYNN B. SALARDA

1 JOHN D. DUNCAN (CA SBN 179560)  
2 PETER J. SALMON (CA SBN 174386)  
3 LAUREL I. HANDLEY (CA SBN 231249)  
4 PITE DUNCAN, LLP  
5 525 E. Main Street  
P.O. Box 12289  
El Cajon, CA 92022-2289  
Telephone: (619) 590-1300  
Facsimile: (619) 590-1385

**6 | Attorneys for Petitioner Action Foreclosure Services, Inc.**

7

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO - NORTH COUNTY

IN RE: VACANT LAND LOCATED IN SAN  
DIEGO COUNTY APNS 279-150-22 AND  
280-140-10

Case No.: 37-2007-00080647-CU-PT-NC

**PROOF OF SERVICE**

13 I, the undersigned, declare: I am, and was at the time of service of the papers herein referred  
14 to, over the age of 18 years, and not a party to this action. My business address is 525 East Main  
Street, El Cajon, California 92020.

15 On 1-17-08, 2008, I served the following documents:

- 1. NOTICE OF ORDER AND OF NO FURTHER APPEARANCES;**
- 2. NOTICE OF CASE ASSIGNMENT; and**
- 3. NOTICE OF HEARING**

19 on the parties in this action addressed as follows:

20 Denny Johnston  
21 C/O Taylor Pipeline, Inc.  
22 2625 Las Palmas Avenue  
Escondido, CA 92025

Denny Johnston  
44913 Silver Rose Street  
Temecula, CA 92592

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1855 Rainbow Valley Blvd.  
Fallbrook, CA 92028

Derek Spiker  
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Ramona, CA 92065

25 Michael Spiker  
1855 Rainbow Valley Blvd.  
Fallbrook, CA 92028

Nancy Spiker  
1855 Rainbow Valley Blvd.  
Fallbrook, CA 92028

20 Nicole Spiker  
27 19773 Ramona Trails Drive  
Ramona, CA 92065

Sherill Johnston  
2625 Las Palmas Avenue  
Escondido, CA 92025

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4      Michael Spiker 5      2625 Las Palmas Avenue 6      Escondido, CA 92025	Nancy Spiker 2625 Las Palmas Avenue Escondido, CA 92025
7      Sherill Lynne Johnston 8      2625 Las Palmas Avenue 9      Escondido, CA 92025	Denny Johnston 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
10     Sherill Johnston 11     1855 Rainbow Valley Blvd. 12     Fallbrook, CA 92028	Nicole Spiker 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
13     Target National Bank 14     C/O Eskinos & Adler 15     Donal R. Stebbins/Janet L. Brown 16     Kurtiss A. Jacobs/Jerome M. Yalon 17     218950/84204 18     2325 Clayton Road 19     Concord, CA 94520	State of California Employment Development Department Lien Group, MIC 92G P.O. Box 826880 Sacramento, CA 94280-0001
20     Laguna Niguel District 21     Internal Revenue Service 22     S:C:F:TS:W:AREA 14:GROUP 15 23     24000 Avila Road, M/S 5905 24     Laguna Niguel, CA 92677	Internal Revenue Service Stop 5021/ Advisory Unit 1/RM 4062 300 N. Los Angeles Street Los Angeles, CA 90012 Attn: Technical Support Territory Mgr.
25     Internal Revenue Service 26     Post Office Box 145585 Stop 8420G 27     Cincinnati, OH 45250	Independent Electric Supply, Inc. C/O CRF Solutions Post Office Box 1389 Simi Valley, CA 93062
28     M and D Electric Inc. 29     A California Corporation 30     19773 Ramona Trails 31     Ramona, CA 92065	Laguna Nigel District/Area 16 Internal Revenue Service 24000 Avila Road, Stop 5905 Laguna Nigel, CA 92677 Attn: Technical Support Territory Mgr Advisor: K. Ripp 702-868-5063
32     Charles D. Nachand 33     The Law Offices of Charles D. Nachand 34     447 South Escondido Blvd. 35     Escondido, CA 92025	Charles D. Nachand The Law Offices of Charles D. Nachand 451 South Escondido Boulevard Escondido, CA 92025-4813
36     Employment Development Department 37     800 Capitol Mall Mic 92 H 38     Sacramento, CA 94230	
<p><b>X BY MAIL:</b> I placed a true copy in a sealed envelope addressed as indicated above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.</p>	

1 — **BY CERTIFIED MAIL:** I placed a true copy in a sealed envelope addressed as indicated  
2 above via certified mail, return receipt requested.

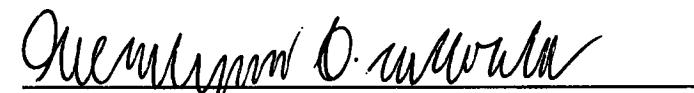
3 — **BY FACSIMILE:** I personally sent to the addressee's facsimile number a true copy of the  
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5 facsimile machine used. Thereafter, I placed a true copy in a sealed envelope addressed and  
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9 processing correspondence for Federal Express delivery and that the documents served are  
10 deposited with Federal Express this date for overnight delivery.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing  
12 is true and correct.

13 Executed on 1-17-08, 2008, at San Diego, California.

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4 El Cajon, CA 92022-2289  
5 Telephone: (619) 590-1300  
5 Facsimile: (619) 590-1385  
6 Attorneys for Petitioner Action Foreclosure Services, Inc.

37-2007-00080647-CU-PT-NC  
CLERK'S OFFICE  
SAN DIEGO SUPERIOR COURT  
SAN DIEGO, CALIFORNIA

7  
8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SAN DIEGO - NORTH COUNTY  
10  
11 IN RE: VACANT LAND LOCATED IN SAN  
12 DIEGO COUNTY APNS 279-150-22 AND  
12 280-140-10  
13  
14 Case No.: 37-2007-00080647-CU-PT-NC  
15  
16 UnLimited Jurisdiction  
17 NOTICE OF ORDER AND OF NO  
18 FURTHER APPEARANCES  
19 [Amount Demanded Exceeds \$25,000.00]

20 TO ALL INTERESTED PARTIES, AND THEIR ATTORNEYS OF RECORD:  
21 PLEASE TAKE NOTICE that on December 27, 2007, the Superior Court of California,  
22 County of San Diego - North County, Case No.: 37-2007-00080647-CU-PT-NC, executed an Order  
23 to deposit funds that discharged Petitioner Action Foreclosure Services, Inc. of further responsibility  
24 to make appearances in this matter and disburse the surplus sale proceeds. (Order attached hereto  
25 as Exhibit A.) In accordance with this Order, Petitioner will not make further appearances in this  
26 action.

27 Dated: 1/17/08 PITE DUNCAN, LLP

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# Exhibit A

FILED  
Clerk of the Superior Court

DEC 27 2007

By: Josie Castillo

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO - NORTH COUNTY

IN RE:

VACANT LAND LOCATED IN SAN  
DIEGO COUNTY APNS 279-150-22 AND  
280-140-10

Case No.: 37-2007-00080647-CU-PT-NC

UnLimited Jurisdiction

ORDER TO DEPOSIT SURPLUS FUNDS

[Amount Demanded Exceeds \$25,000.00]

The Court, having reviewed the Petition filed herein and upon the application of the Trustee to allow the Clerk of the Court to deposit funds with the County Treasurer,

IT IS ORDERED THAT:

The Clerk shall receive the sum of \$76,142.61, made payable to Superior Court of California, and shall deposit said amount with the County Treasurer, minus any reasonable fee that the Clerk may charge;

IT IS FURTHER ORDERED THAT the Petitioner, Action Foreclosure Services, Inc., as Trustee, is hereby discharged of further responsibility for the disbursement of sale proceeds pursuant to Civil Code section 2924j(c) and is not required to make further appearances in this matter; and

IT IS FURTHER ORDERED THAT within 90 days after deposit, the Court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the Court pursuant to Civil Code section 2924j(d). The Clerk shall schedule and serve written notice of the hearing by first-class mail on all claimants identified in Petitioner's declaration at the addresses specified therein. The Petitioner has supplied the Court with pre-addressed envelopes for the Clerk's

1 convenience.

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3 Dated: DEC 27 2007.

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3 / MARTIN STAVEN  
JUDGE OF THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <i>Petition of Action Foreclosure Services</i>		FOR COURT USE ONLY
TELEPHONE NO.:	FAX NO.:	
ATTORNEY FOR (Name):		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>		
<input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> FAMILY COURT, 1555 6TH AVE., SAN DIEGO, CA 92101-3294 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649		
PLAINTIFF(S)/PETITIONER(S)/IN THE MATTER OF:		
DEFENDANT(S)/RESPONDENT(S)		
<b>REMITTANCE OF STATUTORY FEES</b>		CASE NUMBER - PARCEL NUMBER <i>80647</i>

Attached is  cash  check # 7085 tendered on behalf of:

Pt<sup>f</sup>

Dft

Other

collected as the statutory fee for:

or NO FEE  Forma Pauperis  Government Agency (GC 6103)

*\$ 76,142.61*

FMS	AMOUNT	CODE §	DESCRIPTION
<input type="checkbox"/> CX	\$550.00	GC 70616(a)	Civil Complex Litigation Fee - Plaintiff
<input type="checkbox"/> RX	\$550.00	GC70616(b)	Civil Complex Litigation Fee - Response - Each Defendant - (\$10,000 cap)
<input type="checkbox"/> MF	\$40.00	GC70617(a)	Motions: including, request for continuance of trial, new trial, ex parte requiring notice
<input type="checkbox"/> MJ	\$200.00	GC70617(d)	Motion for Summary Judgment/Adjudication.
<input type="checkbox"/> FX	\$40.00	GC70677(a)	Motion or OSC - Family Law
<input type="checkbox"/> UR	\$320.00	GC70612	Answer/Response/First Paper - Unlimited civil
<input type="checkbox"/> MD	\$320.00	GC70670(d)	Answer/Response/First Paper - Dissolution - Family Law
<input type="checkbox"/> DR	\$320.00	GC70670(c)	Answer/Response/First Paper - Other than Dissolution - Family Law
<input type="checkbox"/> QU	\$300.00	GC70614(a)	Answer - Limited Civil (demand over \$10,000 and less than \$25,000)
<input type="checkbox"/> FA	\$180.00	GC70614(b)	Answer - Limited Civil (demand \$10,000 or less)
<input type="checkbox"/> WE	\$15.00	GC70626(a)(1)	Issuance of Writ of Execution/Attachment/Possession, etc.
<input type="checkbox"/> AU	\$15.00	GC70626(a)(2)	Issuance of Abstract of Judgment
<input type="checkbox"/> OS	\$20.00	GC70626(b)(1)	Issuance of Order of Sale
<input type="checkbox"/> SI	Varies	CCP177.5	Money Sanctions
<input type="checkbox"/> IJ	\$150.00	CCP631(b)	Jury Fees - Initial
<input type="checkbox"/> CJ	Varies	CCP631(c)	Jury Fees - Subsequent
<input type="checkbox"/> RN	\$140.00	GC70619	Reclassification Fee (CCP403.060)
<input type="checkbox"/> CF	\$15.00	GC70626(a)(4)	Certification
<input type="checkbox"/> OD	\$20.00	GC70626(b)(5)	Issuing Commission to take deposition out of State - Fee Per Commission
<input type="checkbox"/> NH	\$20.00	GC70617(c)(2)	Stipulation and Order without hearing (No Fee for Stip that does not require an order)
<input type="checkbox"/> MZ	\$40.00	GC70657(a)	Petition to withdraw funds from blocked account
<input type="checkbox"/> VE	\$50.00	GC70618	Change of Venue
<input type="checkbox"/> NH	\$20.00	GC70617(c)(1)	Request/application/motion for/or notice of continuance of hearing or CMC
<input type="checkbox"/> RF	Varies	GC68086(a)(1)-(3)	Court Reporter (Courtroom Clerk Use) <input type="checkbox"/> \$646.00 Full Day <input type="checkbox"/> \$323.00 Half Day
<input type="checkbox"/> RQ	Varies	GC69953.5	Second Reporter on a Civil Daily <input type="checkbox"/> \$284.00 Full Day <input type="checkbox"/> \$142.00 Half Day

Other

Clerk's Name: *[Signature]*

Department: \_\_\_\_\_

**F I L E D**  
Court of Appeals of Oregon

DEC 27 2007

By: Josie Castillo

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO - NORTH COUNTY

**IN RE:**

**VACANT LAND LOCATED IN SAN  
DIEGO COUNTY APNS 279-150-22 AND  
280-140-10**

Case No.: 37-2007-00080647-CU-PT-NC

## UnLimited Jurisdiction

# **ORDER TO DEPOSIT SURPLUS FUNDS**

[Amount Demanded Exceeds \$25,000.00]

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**IT IS ORDERED THAT:**

18 The Clerk shall receive the sum of \$76,142.61, made payable to Superior Court of California,  
19 and shall deposit said amount with the County Treasurer, minus any reasonable fee that the Clerk  
20 may charge;

IT IS FURTHER ORDERED THAT the Petitioner, Action Foreclosure Services, Inc., as Trustee, is hereby discharged of further responsibility for the disbursement of sale proceeds pursuant to Civil Code section 2924j(c) and is not required to make further appearances in this matter; and

IT IS FURTHER ORDERED THAT within 90 days after deposit, the Court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the Court pursuant to Civil Code section 2924j(d). The Clerk shall schedule and serve written notice of the hearing by first-class mail on all claimants identified in Petitioner's declaration at the addresses specified therein. The Petitioner has supplied the Court with pre-addressed envelopes for the Clerk's

**ORIGINAL**

1 convenience.

2 Dated:

12/27/07

~~JUDGE OF THE SUPERIOR COURT~~

MARTIN STAVEN

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F I L E D  
Clerk of the Superior Court

DEC 27 2007

By: Josie Castillo

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO - NORTH COUNTY

IN RE:

VACANT LAND LOCATED IN SAN  
DIEGO COUNTY APNS 279-150-22 AND  
280-140-10

Case No.: 37-2007-00080647-CU-PT-NC

UnLimited Jurisdiction

NOTICE OF HEARING SET BY THE  
CLERK OF THE COURT PURSUANT TO  
CIVIL CODE SECTION 2924j(d)

To all interested persons, please take notice that SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO - NORTH COUNTY, has set a hearing to determine disbursement of  
surplus funds on deposit, that will be heard on 3-28-08 at 1:30pm  
in Department 12 in Superior Court of California, COUNTY OF SAN DIEGO -  
NORTH COUNTY, located at 325 South Melrose, Vista, CA 92083.

All potential claimants shall file and serve their claim to the surplus funds within 15 days of  
the hearing pursuant to Civil Code section 2924j(d), which provides in pertinent part:

Within 90 days after deposit with the clerk, the court shall consider all claims filed  
at least 15 days before the date on which the hearing is scheduled by the court, the  
clerk shall serve written notice of the hearing by first-class mail on all claimants  
identified in the trustee's declaration at the addresses specified therein.

Dated: DEC 27 2007.

*J.C. Castillo*  
CLERK OF THE SUPERIOR COURT  
J.C. CASTILLO

1 JOHN D. DUNCAN (CA SBN 179560)  
2 PETER J. SALMON (CA SBN 174386)  
3 LAUREL I. HANDLEY (CA SBN 231249)  
4 PITE DUNCAN, LLP  
5 525 E. Main Street  
P.O. Box 12289  
El Cajon, CA 92022-2289  
Telephone: (619) 590-1300  
Facsimile: (619) 590-1385

NORTH COUNTY  
2007 DEC 13 AM 11:55  
CLERK'S OFFICE SAN DIEGO, CA

6 Attorneys for Petitioner Action Foreclosure Services, Inc.

7

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SAN DIEGO - NORTH COUNTY

10 IN RE:  
11 VACANT LAND LOCATED IN SAN  
12 DIEGO COUNTY APNS 279-150-22 AND  
13 280-140-10

Case No.:

Unlimited Jurisdiction

NOTICE OF PETITION TO SUPERIOR  
COURT TO DEPOSIT SURPLUS FUNDS

[Amount Demanded Exceeds \$25,000.00]

15 To all interested persons, please take notice that Action Foreclosure Services, Inc., is making  
16 an application to the Superior Court of California, County of San Diego - North County, located  
17 at 325 South Melrose, Vista, CA 92083, seeking an order to the Clerk of the Court to deposit surplus  
18 funds in the amount of \$76,142.61 with the County Treasurer. All potential claimants are hereby  
19 notified that all claims for the funds must be filed with said court within thirty (30) days from the  
20 date of this Notice as required by California Civil Code section 2924j(d).

21 Upon receipt of conformed copies from the court, Pite Duncan, LLP, will send a Notice of  
22 Case Number Assignment.

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28 /./.

1 You will be notified by the Clerk of the Superior Court as to any future hearing dates and  
2 where to submit any claim for funds. The phone number of the court is (760) 726-9595.

3

4 Dated: 12/4/07

PITE DUNCAN, LLP

5

  
6 LAUREL I. HANDLEY  
7 Attorney for Action Foreclosure Services, Inc.

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9 1320873.wpd

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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 325 S. Melrose	
MAILING ADDRESS: 325 S. Melrose	
CITY AND ZIP CODE: Vista, CA 92081	
BRANCH NAME: North County	
TELEPHONE NUMBER: (760) 806-8167	
PLAINTIFF(S) / PETITIONER(S): Action Foreclosure Services, Inc.	
DEFENDANT(S) / RESPONDENT(S):	
PETITION OF ACTION FORECLOSURE SERVICES, INC.	
<b>NOTICE OF CASE ASSIGNMENT</b>	CASE NUMBER: 37-2007-00080647-CU-PT-NC

Judge:

Department: N-04

**COMPLAINT/PETITION FILED: 12/13/2007**


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**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW**

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IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

1 JOHN D. DUNCAN (CA SBN 179560)  
2 PETER J. SALMON (CA SBN 174386)  
2 LAUREL I. HANDLEY (CA SBN 231249)  
3 PITE DUNCAN, LLP  
3 525 E. Main Street  
4 P.O. Box 12289  
4 El Cajon, CA 92022-2289  
Telephone: (619) 590-1300  
5 Facsimile: (619) 590-1385

NORTH COUNTY, CALIFORNIA  
2001 DEC 13 AM 11:55  
CLERK, SUPERIOR COURT  
SAN DIEGO, CA

6 Attorneys for Petitioner Action Foreclosure Services, Inc.

7

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SAN DIEGO - NORTH COUNTY

10 IN RE:  
11

12 VACANT LAND LOCATED IN SAN  
12 DIEGO COUNTY APNS 279-150-22 AND  
13 280-140-10

Case No.: 37-2007-00080647-CU-PT-NC

PROOF OF SERVICE

14  
15 I, the undersigned, declare: I am, and was at the time of service of the papers herein referred  
to, over the age of 18 years, and not a party to this action. My business address is 525 East Main  
Street, El Cajon, California 92020.  
16

17 On December 12, 2007, I served the following documents:

18 1. PETITION AND DECLARATION REGARDING UNRESOLVED CLAIMS  
18 AND DEPOSIT OF UNDISTRIBUTED SURPLUS PROCEEDS OF  
19 TRUSTEE'S SALE

20 2. NOTICE OF PETITION TO SUPERIOR COURT TO DEPOSIT SURPLUS  
FUND

21 3. CIVIL CASE COVER SHEET

22 4. ORDER TO DEPOSIT SURPLUS FUNDS

23 on the parties in this action addressed as follows:  
24

25 Denny Johnston  
C/O Taylor Pipeline, Inc.  
2625 Las Palmas Avenue  
26 Escondido, CA 92025

Denny Johnston  
44913 Silver Rose Street  
Temecula, CA 92592

27 Derek Spiker  
1855 Rainbow Valley Blvd.  
28 Fallbrook, CA 92028

Derek Spiker  
19773 Ramona Trails Drive  
Ramona, CA 92065

ORIGINAL

1	Michael Spiker 1855 Rainbow Valley Blvd. Fallbrook, CA 92028	Nancy Spiker 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
3	Nicole Spiker 19773 Ramona Trails Drive Ramona, CA 92065	Sherill Johnston 2625 Las Palmas Avenue Escondido, CA 92025
5	Nicole Spiker C/O Three D Electric 1855 Rainbow Valley Blvd Fallbrook, CA 92028	Denny Johnston 2625 Las Palmas Avenue Escondido, CA 92025
7	Derek Spiker 2625 Las Palmas Avenue Escondido, CA 92025	Nicole Spiker 2625 Las Palmas Avenue Escondido, CA 92025
9	Michael Spiker 2625 Las Palmas Avenue Escondido, CA 92025	Nancy Spiker 2625 Las Palmas Avenue Escondido, CA 92025
11	Sherill Lynne Johnston 2625 Las Palmas Avenue Escondido, CA 92025	Denny Johnston 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
13	Sherill Johnston 1855 Rainbow Valley Blvd. Fallbrook, CA 92028	Nicole Spiker 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
15	Target National Bank C/O Eskinos & Adler Donal R. Stebbins/Janet L. Brown Kurtiss A. Jacobs/Jerome M. Yalon 218950/84204 2325 Clayton Road Concord, CA 94520	State of California Employment Development Department Lien Group, MIC 92G P.O. Box 826880 Sacramento, CA 94280-0001
19	Laguna Niguel District Internal Revenue Service S:C:F:TS:W:AREA 14:GROUP 15 24000 Avila Road, M/S 5905 Laguna Niguel, CA 92677	Internal Revenue Service Stop 5021/ Advisory Unit 1/RM 4062 300 N. Los Angeles Street Los Angeles, CA 90012 Attn: Technical Support Territory Mgr.
23	Internal Revenue Service Post Office Box 145585 Stop 8420G Cincinnati, OH 45250	Independent Electric Supply, Inc. C/O CRF Solutions Post Office Box 1389 Simi Valley, CA 93062
25	M and D Electric Inc. A California Corporation 19773 Ramona Trails Ramona, CA 92065	Laguna Nigel District/Area 16 Internal Revenue Service 24000 Avila Road, Stop 5905 Laguna Nigel, CA 92677 Attn: Technical Support Territory Mgr Advisor: K. Ripp 702-868-5063
27	Charles D. Nachand	
28	The Law Offices of Charles D. Nachand 447 South Escondido Blvd. Escondido, CA 92025	

1 Charles D. Nachand  
2 The Law Offices of Charles D. Nachand  
3 451 South Escondido Boulevard  
4 Escondido, CA 92025-4813

Employment Development Department  
800 Capitol Mall Mic 92 H  
Sacramento, CA 94230

5

6

**BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

7

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**BY CERTIFIED MAIL:** I placed a true copy in a sealed envelope addressed as indicated above via certified mail, return receipt requested.

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**BY FACSIMILE:** I personally sent to the addressee's facsimile number a true copy of the above-described document(s). I verified transmission with a confirmation printed out by the facsimile machine used. Thereafter, I placed a true copy in a sealed envelope addressed and mailed as indicated above.

**BY FEDERAL EXPRESS:** I placed a true copy in a sealed Federal Express envelope addressed as indicated above. I am familiar with the firm's practice of collection and processing correspondence for Federal Express delivery and that the documents served are deposited with Federal Express this date for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 12, 2007, at El Cajon, California.

  
ROSALYNN B. SALARDA

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO - NORTH COUNTY

IN RE:

VACANT LAND LOCATED IN SAN  
DIEGO COUNTY APNS 279-150-22 AND  
280-140-10

Case No.: 37-2007-00080647-CU-PT-NC

PROOF OF SERVICE

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Hearing upon each party or counsel named below by depositing in the United States mail at the courthouse in *San Diego*, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid.

On \_\_\_\_\_, 2007, I served the following documents:

1. **NOTICE OF HEARING SET BY THE CLERK OF THE COURT**

on the parties in this action addressed as follows:

Denny Johnston  
C/O Taylor Pipeline, Inc.  
2625 Las Palmas Avenue  
Escondido, CA 92025

Denny Johnston  
44913 Silver Rose Street  
Temecula, CA 92592

Derek Spiker  
1855 Rainbow Valley Blvd.  
Fallbrook, CA 92028

Derek Spiker  
19773 Ramona Trails Drive  
Ramona, CA 92065

Michael Spiker  
1855 Rainbow Valley Blvd.  
Fallbrook, CA 92028

Nancy Spiker  
1855 Rainbow Valley Blvd.  
Fallbrook, CA 92028

Nicole Spiker  
19773 Ramona Trails Drive  
Ramona, CA 92065

Sherill Johnston  
2625 Las Palmas Avenue  
Escondido, CA 92025

**ORIGINAL**

1	Nicole Spiker C/O Three D Electric 1855 Rainbow Valley Blvd Fallbrook, CA 92028	Denny Johnston 2625 Las Palmas Avenue Escondido, CA 92025
2		
3	Derek Spiker 2625 Las Palmas Avenue Escondido, CA 92025	Nicole Spiker 2625 Las Palmas Avenue Escondido, CA 92025
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5	Michael Spiker 2625 Las Palmas Avenue Escondido, CA 92025	Nancy Spiker 2625 Las Palmas Avenue Escondido, CA 92025
6		
7	Sherill Lynne Johnston 2625 Las Palmas Avenue Escondido, CA 92025	Denny Johnston 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
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9	Sherill Johnston 1855 Rainbow Valley Blvd. Fallbrook, CA 92028	Nicole Spiker 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
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11	Target National Bank C/O Eskinos & Adler	State of California Employment Development Department
12	Donal R. Stebbins/Janet L. Brown	Lien Group, MIC 92G
13	Kurtiss A. Jacobs/Jerome M. Yalon 218950/84204	P.O. Box 826880
14	2325 Clayton Road Concord, CA 94520	Sacramento, CA 94280-0001
15		
16	Laguna Niguel District Internal Revenue Service S:C:F:TS:W:AREA 14:GROUP 15 24000 Avila Road, M/S 5905 Laguna Niguel, CA 92677	Internal Revenue Service Stop 5021/ Advisory Unit 1/RM 4062 300 N. Los Angeles Street Los Angeles, CA 90012 Attn: Technical Support Territory Mgr.
17		
18	Internal Revenue Service Post Office Box 145585 Stop 8420G Cincinnati, OH 45250	Independent Electric Supply, Inc. C/O CRF Solutions Post Office Box 1389 Simi Valley, CA 93062
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22		
23		
24		
25	Charles D. Nachand The Law Offices of Charles D. Nachand 447 South Escondido Blvd. Escondido, CA 92025	Charles D. Nachand The Law Offices of Charles D. Nachand 451 South Escondido Boulevard Escondido, CA 92025-4813
26		
27		
28	Employment Development Department 800 Capitol Mall Mic 92 H Sacramento, CA 94230	

X **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**5** — **BY CERTIFIED MAIL:** I placed a true copy in a sealed envelope addressed as indicated above via certified mail, return receipt requested.

**6** \_\_\_\_\_  
**7** **BY FACSIMILE:** I personally sent to the addressee's facsimile number a true copy of the  
above-described document(s). I verified transmission with a confirmation printed out by the  
facsimile machine used. Thereafter, I placed a true copy in a sealed envelope addressed and  
mailed as indicated above.

**BY FEDERAL EXPRESS:** I placed a true copy in a sealed Federal Express envelope addressed as indicated above. I am familiar with the firm's practice of collection and processing correspondence for Federal Express delivery and that the documents served are deposited with Federal Express this date for overnight delivery.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

Executed on \_\_\_\_\_, 2007, at \_\_\_\_\_, California.

**CLERK OF THE SUPERIOR COURT**

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>LAUREL I. HANDLEY (CASBN 231249)</b> PITE DUNCAN, LLP 525 E. MAIN STREET P.O. BOX 12289 EL CAJON, CA 92020 TELEPHONE NO.: (619) 590-1300 FAX NO.: (619) 590-1385		FOR COURT USE ONLY DATE REC'D BY COURT <b>2007 DEC 13 AM 11:56</b>
ATTORNEY FOR (Name): <b>ACTION FORECLOSURE SERVICES, INC.</b>		CLERK'S OFFICE SAN DIEGO, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 325 SOUTH MELROSE MAILING ADDRESS: CITY AND ZIP CODE: VISTA, CA 92083 BRANCH NAME: NORTH COUNTY		
CASE NAME: VACANT LAND LOCATED IN SAN DIEGO COUNTY APNS 279-150-22 AND 280-140-10		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: <b>37-2007-00080647-CU-PT-NC</b>
		JUDGE:
		DEPT:

*Items 1-6 below must be completed (see instructions on page 2).*

## 1. Check one box below for the case type that best describes this case:

**Auto Tort**

Auto (22)  
 Uninsured motorist (46)  
**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**  
 Asbestos (04)  
 Product liability (24)  
 Medical malpractice (45)  
 Other PI/PD/WD (23)

**Non-PI/PD/WD (Other) Tort**

Business tort/unfair business practice (07)  
 Civil rights (08)  
 Defamation (13)  
 Fraud (16)  
 Intellectual property (19)  
 Professional negligence (25)  
 Other non-PI/PD/WD tort (35)

**Employment**

Wrongful termination (36)  
 Other employment (15)

**Contract**

Breach of contract/warranty (06)  
 Rule 3.740 collections (09)  
 Other collections (09)  
 Insurance coverage (18)  
 Other contract (37)

**Real Property**

Eminent domain/inverse condemnation (14)  
 Wrongful eviction (33)  
 Other real property (26)

**Unlawful Detainer**

Commercial (31)  
 Residential (32)  
 Drugs (38)

**Judicial Review**

Asset forfeiture (05)  
 Petition re: arbitration award (11)  
 Writ of mandate (02)  
 Other judicial review (39)

**Provisionally Complex Civil Litigation**

(Cal. Rules of Court, rules 3.400-3.403)  
 Antitrust/Trade regulation (03)  
 Construction defect (10)  
 Mass tort (40)  
 Securities litigation (28)  
 Environmental/Toxic tort (30)  
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

**Enforcement of Judgment**

Enforcement of judgment (20)

**Miscellaneous Civil Complaint**

RICO (27)  
 Other complaint (not specified above) (42)  
**Miscellaneous Civil Petition**  
 Partnership and corporate governance (21)  
 Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a.  Large number of separately represented parties    d.  Large number of witnesses  
 b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve    e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c.  Substantial amount of documentary evidence    f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): 1

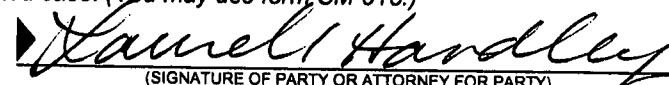
5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **12/14**, 2007

LAUREL I. HANDLEY (CASBN 231249)

(TYPE OR PRINT NAME)

  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.



## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**Auto Tort**

Auto (22)—Personal Injury/Property

Damage/Wrongful Death

Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)

Asbestos Property Damage  
Asbestos Personal Injury/  
Wrongful DeathProduct Liability (*not asbestos or toxic/environmental*) (24)

Medical Malpractice (45)

Medical Malpractice—  
Physicians & SurgeonsOther Professional Health Care  
Malpractice

Other PI/PD/WD (23)

Premises Liability (*e.g., slip  
and fall*)Intentional Bodily Injury/PD/WD  
(*e.g., assault, vandalism*)Intentional Infliction of  
Emotional DistressNegligent Infliction of  
Emotional Distress

Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**Business Tort/Unfair Business  
Practice (07)Civil Rights (*e.g., discrimination,  
false arrest*) (*not civil  
harassment*) (08)Defamation (*e.g., slander, libel*)  
(13)

Fraud (16)

Intellectual Property (19)

Professional Negligence (25)

Legal Malpractice

Other Professional Malpractice  
(*not medical or legal*)

Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)

Other Employment (15)

**CASE TYPES AND EXAMPLES****Contract**

Breach of Contract/Warranty (06)

Breach of Rental/Lease  
*Contract (not unlawful detainer  
or wrongful eviction)*Contract/Warranty Breach—Seller  
Plaintiff (*not fraud or negligence*)Negligent Breach of Contract/  
WarrantyOther Breach of Contract/Warranty  
Collections (*e.g., money owed, open  
book accounts*) (09)

Collection Case—Seller Plaintiff

Other Promissory Note/Collections  
CaseInsurance Coverage (*not provisionally  
complex*) (18)

Auto Subrogation

Other Coverage

Other Contract (37)

Contractual Fraud

Other Contract Dispute

**Real Property**Eminent Domain/Inverse  
Condemnation (14)

Wrongful Eviction (33)

Other Real Property (*e.g., quiet title*) (26)

Writ of Possession of Real Property

Mortgage Foreclosure

Quiet Title

Other Real Property (*not eminent  
domain, landlord/tenant, or  
foreclosure*)**Unlawful Detainer**

Commercial (31)

Residential (32)

Drugs (38) (*if the case involves illegal  
drugs, check this item; otherwise,  
report as Commercial or Residential*)**Judicial Review**

Asset Forfeiture (05)

Petition Re: Arbitration Award (11)

Writ of Mandate (02)

Writ—Administrative Mandamus

Writ—Mandamus on Limited Court  
Case MatterWrit—Other Limited Court Case  
Review

Other Judicial Review (39)

Review of Health Officer Order

Notice of Appeal—Labor  
Commissioner Appeals**Provisionally Complex Civil Litigation (Cal.  
Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)

Construction Defect (10)

Claims Involving Mass Tort (40)

Securities Litigation (28)

Environmental/Toxic Tort (30)

Insurance Coverage Claims

*(arising from provisionally complex  
case type listed above) (41)***Enforcement of Judgment**

Enforcement of Judgment (20)

Abstract of Judgment (Out of  
County)Confession of Judgment (*non-  
domestic relations*)

Sister State Judgment

Administrative Agency Award  
(*not unpaid taxes*)Petition/Certification of Entry of  
Judgment on Unpaid TaxesOther Enforcement of Judgment  
Case**Miscellaneous Civil Complaint**

RICO (27)

Other Complaint (*not specified  
above*) (42)

Declaratory Relief Only

Injunctive Relief Only (*non-  
harassment*)

Mechanics Lien

Other Commercial Complaint  
Case (*non-tort/non-complex*)Other Civil Complaint  
(*non-tort/non-complex*)**Miscellaneous Civil Petition**Partnership and Corporate  
Governance (21)Other Petition (*not specified  
above*) (43)

Civil Harassment

Workplace Violence

Elder/Dependent Adult  
Abuse

Election Contest

Petition for Name Change

Petition for Relief from Late  
Claim

Other Civil Petition

1 Name of Case: **In Re Vacant Land Located in SD Co., APNS 279-150-22, 280-140-10**  
 2 San Diego Superior Court, Case No.: 37-2007-00080647-CU-PT-NC

3 **DECLARATION OF SERVICE**

4 REC'D MAR -6 PM 3:44  
 5 CLERK'S OFFICE, SAN DIEGO COUNTY, CA  
 6 7  
 8

I, Kristine Merel, declare as follows:

I am over the age of eighteen years and not a party to the case. I am employed in the County of San Diego, California, where the mailing occurs; and my business address is 451 South Escondido Boulevard, Escondido, CA 92025.

On March 6, 2008 I served the foregoing document(s) described as: **Response to Petition, Claims, Priority Liens and Request for Payment by Respondent; Declaration of Sherill Johnston** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

See Exhibit A attached hereto.

- 11 (X) BY MAIL. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to *Code of Civil Procedure* §1013a.
- 14 ( ) BY FAX. In addition to service by mail as set forth above, a copy of said document(s) were also delivered by facsimile transmission to the addressee pursuant to *Code of Civil Procedure* §1013(e).
- 16 ( ) BY PERSONAL SERVICE. I hand-delivered said document(s) to the addressee pursuant to *Code of Civil Procedure* §1011.
- 18 ( ) BY EXPRESS MAIL. I caused said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to *Code of Civil Procedure* §1013(c)

19 Executed March 6, 2008, at Escondido, California.

20 I declare under the penalty of perjury under the laws of the State of California that the above is true  
 21 and correct.

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 23 Kristine Merel  
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1 Michael Spiker  
2 1855 Rainbow Valley Blvd.  
Fallbrook, CA 92028

3 Nicole Spiker  
4 19773 Ramona Trails Drive  
Ramona, CA 92065

5 Employment Development Department  
6 800 Capitol Mall Mic 92 H  
Sacramento, CA 94230

7 State of California Employment Development  
8 Department  
Lien Group, MIC 92G  
P.O. Box 826880  
9 Sacramento, CA 94280-0001

Denny Johnston  
44913 Silver Rose Street  
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Derek Spiker  
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Nancy Spiker  
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Fallbrook, CA 92028

Internal Revenue Service  
c/o Lauren Castaldi, Esq.  
555 4<sup>th</sup> Street, N.W.  
Washington, D.C. 20001

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):  LAUREL I. HANDLEY (CASBN 231249) PITE DUNCAN, LLP 525 E. MAIN STREET P.O. BOX 12289 EL CAJON, CA 92020	
TELEPHONE NO.: (619) 590-1300 FAX NO. (Optional): (619) 590-1385 E-MAIL ADDRESS (Optional): LHANDLEY@PITEDUNCAN.COM	
ATTORNEY FOR (Name): ACTION FORECLOSURE SERVICES, INC.	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 325 SOUTH MELROSE MAILING ADDRESS: CITY AND ZIP CODE: VISTA, CA 92083 BRANCH NAME: NORTH COUNTY	

FOR COURT USE ONLY
RECEIVED - 2007 DEC 13 AM 11:56
CLERK'S OFFICE, SUPERIOR COURT SAN DIEGO, CA

**IN RE (ADDRESS OF REAL PROPERTY):**  
VACANT LAND LOCATED IN SAN DIEGO COUNTY APNS 279-150-22 AND 280-140-10

**PETITION AND DECLARATION REGARDING UNRESOLVED  
CLAIMS AND DEPOSIT OF UNDISTRIBUTED  
SURPLUS PROCEEDS OF TRUSTEE'S SALE**

<b>Jurisdiction (check all that apply):</b>	CASE NUMBER:
<input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE	37-2007-00080647-CU-PT-NC
Amount deposited <input type="checkbox"/> does not exceed \$10,000	
<input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000	
<input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)	

1. Petitioner (name): ACTION FORECLOSURE SERVICES, INC. is the trustee under the Deed of Trust described in items 2 and 3 below.

**The Deed of Trust**

2. The Deed of Trust encumbered the real property commonly known as (describe): ASSESSORS PARCEL NUMBERS 279-150-22 AND 280-140-10.

(the "property") and legally described  in Attachment 2  as follows:

3. The Deed of Trust was

a. Executed by (name): DENNY AND SHERILL JOHNSTON, ET AL as trustor.

b. Executed on (date): APRIL 24, 2002

c. Recorded:

(1) Date: APRIL 26, 2002

(2) County: SAN DIEGO

(3) Instrument number: 2002-0355530

**ORIGINAL**

IN RE: VACANT LAND LOCATED IN SAN DIEGO COUNTY APNS 279-  
150-22 AND 280-140-10

CASE NUMBER:

**The Trustee's Sale, Surplus Proceeds, and Notice to Potential Claimants**

4. The property was the subject of a trustee's sale that was held on (*date*): MAY 4, 2007
5. A trustee's sale guarantee was prepared for the trustee's sale. (*A copy of the trustee's sale guarantee must be attached as Attachment 5.*)
6. The total sale price of the property was: \$ 302,100.00
7. After payment of the amounts required by Civil Code section 2924k(a)(1)–(2), there were surplus proceeds from the trustee's sale available to potential claimants in the total amount of: \$ 78,137.61
8. Within 30 days after the trustee's sale, the trustee sent written notice under Civil Code section 2924j(a) to all persons with a recorded interest in the real property as of the date immediately prior to the trustee's sale who would be entitled to notice. The names and addresses of all persons sent notice under Civil Code section 2924j(a) are as follows:

Continued on Attachment 8.

**The Claims**

9. The trustee has received a total of (*specify number*): 3 written claims from potential claimants.
10. The trustee has exercised due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from the persons identified in item 8 to whom notice was sent.
11. The trustee submits this declaration under Civil Code section 2924j(c) for the following reason:
  - a.  After due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds. (*If this reason applies, describe the problem of determining priorities in Attachment 11a.*)
  - b.  The trustee has determined that there is a conflict between potential claimants to the surplus proceeds. (*If this reason applies, identify the claimants and describe the conflict in Attachment 11b.*)

12. The trustee provides the following additional information relevant to the identity, location, priority of potential claimants, and the conflict of claims:
 

CHARLES D. NACHAND THE LAW OFFICES OF CHARLES D. NACHAND 451 SOUTH ESCONDIDO BOULEVARD ESCONDIDO, CA 92025-4813	EMPLOYMENT DEVELOPMENT DEPARTMENT 800 CAPITOL MALL MIC 92 H SACRAMENTO, CA 94230
--	--

Continued on Attachment 12.

**Notice of Intent to Deposit Funds and Proof of Service**

13. The trustee has provided written notice to all persons with a recorded interest in the property who would be entitled to notice under Civil Code section 2924b(b)–(c). The notice includes the following information:
  - a. The trustee intends to deposit funds from the trustee's sale with the clerk of the court.
  - b. A claim for funds must be filed with the court within 30 days from the date of notice.
  - c. The address of the court in which the funds are to be deposited and a telephone number for obtaining further information.

*(Proof of Service of the notice on all persons entitled to notice under Civil Code section 2924j(d) must be attached to this declaration as Attachment 13.)*

**IN RE: VACANT LAND LOCATED IN SAN DIEGO COUNTY APNS 279-150-22 AND 280-140-10**

CASE NUMBER:

**Deposit**

**14. Distributions**

The trustee has distributed the total amount of: \$ 0.00

Name of claimant:

to the following claimants based on their written claims:

Amount:

0.00  
0.00  
0.00  
0.00  
0.00  
0.00  
0.00

Continued on Attachment 14.

**15. Trustee's Fees and Expenses**

The trustee has incurred reasonable fees and expenses totaling: \$ 1,635.00. These fees and expenses are recoverable under Civil Code section 2924k(a)(1) and (b) and are described  in Attachment 15  as follows (specify):

TRUSTEE'S FEES AND COSTS.....	\$125.00
ATTORNEY'S FEES AND COSTS.....	\$1,510.00

**16. Deposit**

The amount to be deposited is calculated as follows:

a. Trustee's sale proceeds .....	\$ 302,100.00
b. Debt to foreclosing creditor.....	\$ 223,962.39
c. Available surplus proceeds ( <i>a minus b</i> ) .....	\$ 78,137.61
d. Claims paid by trustee ( <i>from item 14</i> ).....	\$ 0.00
e. Trustee's fees and expenses ( <i>from item 15</i> ).....	\$ 1,635.00
f. Remaining surplus proceeds ( <i>c minus (d plus e)</i> ).....	\$ 76,502.61
g. Filing fee .....	\$ 360.00
h. Deposit ( <i>f minus g</i> ) .....	\$ 76,142.61

(If the trustee is represented by an attorney, the attorney's signature follows):

Date: 12/4 , 2007

LAUREL I. HANDLEY

(TYPE OR PRINT NAME OF ATTORNEY)

Laurel I. Handley  
(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: , 2007

(TYPE OR PRINT NAME OF TRUSTEE)

(SIGNATURE OF TRUSTEE)

IN RE: VACANT LAND LOCATED IN SAN DIEGO COUNTY APNS 279-  
150-22 AND 280-140-10

CASE NUMBER:

**Deposit****14. Distributions**

The trustee has distributed the total amount of: \$ 0.00

Name of claimant:

to the following claimants based on their written claims:

Amount:

0.00  
0.00  
0.00  
0.00  
0.00  
0.00  
0.00

Continued on Attachment 14.

**15. Trustee's Fees and Expenses**The trustee has incurred reasonable fees and expenses totaling: \$ 1,635.00. These fees and expenses are recoverable under Civil Code section 2924k(a)(1) and (b) and are described  in Attachment 15  as follows (specify):

TRUSTEE'S FEES AND COSTS.....	\$125.00
ATTORNEY'S FEES AND COSTS.....	\$1,510.00

**16. Deposit**

The amount to be deposited is calculated as follows:

a. Trustee's sale proceeds .....	\$ 302,100.00
b. Debt to foreclosing creditor .....	\$ 223,962.39
c. Available surplus proceeds (a minus b) .....	\$ 78,137.61
d. Claims paid by trustee (from item 14).....	\$ 0.00
e. Trustee's fees and expenses (from item 15).....	\$ 1,635.00
f. Remaining surplus proceeds (c minus (d plus e)).....	\$ 76,502.61
g. Filing fee .....	\$ 360.00
h. Deposit (f minus g) .....	\$ 76,142.61

(If the trustee is represented by an attorney, the attorney's signature follows):

Date: , 2007

LAUREL I. HANDLEY

(TYPE OR PRINT NAME OF ATTORNEY)

(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 7, 2007

Action Foreclosure Services, Inc.

(TYPE OR PRINT NAME OF TRUSTEE)

by: James M. Allen, Jr., Chief Financial Officer

(SIGNATURE OF TRUSTEE)

## **ATTACHMENT 2**

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

**EXHIBIT "A"  
(LEGAL DESCRIPTION)**

PARCEL 1:

THE NORTHEAST OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 13 SOUTH RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF.

PARCEL 2:

THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF.

NOTE: THE LATEST TAX BILL FROM THE SAN DIEGO COUNTY TAX COLLECTOR SHOWS THE SITUS ADDRESS OF SAID LAND AS VACANT LAND.

ASSESSORS PARCEL NUMBER: 279-150-22

## **ATTACHMENT 5**

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

## **TRUSTEE'S SALE GUARANTEE**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE.

**North American Title Insurance**  
A CORPORATION, HEREIN CALLED THE COMPANY,

### **GUARANTEES**

AS SHOWN IN ITEM 1 OF SCHEDULE A, HEREIN CALLED THE ASSURED, AGAINST LOSS NOT EXCEEDING THE LIABILITY AMOUNT STATED ABOVE WHICH THE ASSURED SHALL SUSTAIN BY REASON OF ANY INCORRECTNESS IN THE ASSURANCE WHICH THE COMPANY HEREBY GIVES THAT, ACCORDING TO THE PUBLIC RECORDS, ON THE DATE STATED BELOW,

1. THE TITLE TO THE HEREIN DESCRIBED ESTATE OR INTEREST WAS VESTED IN THE VESTEE NAMED, SUBJECT TO THE MATTERS SHOWN AS EXCEPTIONS HEREIN, WHICH EXCEPTIONS ARE NOT NECESSARILY SHOWN IN THE ORDER OF THEIR PRIORITY.
2. THE NAMES AND ADDRESSES OF PERSONS WHO HAVE RECORDED REQUESTS, AS PROVIDED BY SECTION 2924B(A) AND (D) OF THE CALIFORNIA CIVIL CODE, FOR A COPY OF NOTICE OF DEFAULT AND A COPY OF NOTICE OF SALE ARE AS SHOWN HEREIN;
3. THE NAMES AND ADDRESSES OF ADDITIONAL PERSONS, WHO, AS PROVIDED BY SECTION 2924B(C)(1) AND (2) OF THE CALIFORNIA CIVIL CODE, ARE ENTITLED TO RECEIVE A COPY OF NOTICE OF DEFAULT AND A COPY OF NOTICE OF SALE ARE AS SHOWN HEREIN;
4. THE NAMES AND ADDRESSES OF STATE TAXING AGENCIES WHICH, AS PROVIDED BY SECTION 2924B(C)(3) OF THE CALIFORNIA CIVIL CODE, ARE ENTITLED TO RECEIVE A COPY OF NOTICE OF SALE, ARE AS SHOWN HEREIN, AND;
5. THE ADDRESSES OF THE INTERNAL REVENUE SERVICE WHICH, AS PROVIDED BY SECTION 2924B(C)(4) OF THE CALIFORNIA CIVIL CODE, ARE ENTITLED TO RECEIVE A COPY OF NOTICE OF SALE, ARE AS SHOWN HEREIN, AND;
6. THE HEREIN DESCRIBED LAND IS LOCATED IN THE CITY OR JUDICIAL DISTRICT STATED HEREIN AND, IF DESIGNATED, THE NEWSPAPER OR NEWSPAPERS LISTED HEREIN QUALIFY FOR PUBLICATION OF NOTICE PURSUANT TO SECTION 2924F OF THE CALIFORNIA CIVIL CODE.

DATED: OCTOBER 18, 2006

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

## SCHEDULE A

YOUR REFERENCE: 2006623

DATED: OCTOBER 18, 2006 AT 8:00 A. M.

LIABILITY: \$200,000.00

PREMIUM: \$672.00

1. NAME OF ASSURED:

TRUSTEE: FIRST AMERICAN TITLE INSURANCE COMPANY

BENEFICIARY: ROBERT A. DAVIS AND MARY CLAIRE DAVIS, AS TRUSTEE, OR THE SUCCESSOR TRUSTEE, OF THE DAVIS FAMILY TRUST DATED MAY 29, 2003

2. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS GUARANTEE IS:

A FEE

3. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

DENNY JOHNSTON AND SHERILL JOHNSTON, HUSBAND AND WIFE, AS JOINT TENANTS AS TO AN UNDIVIDED 1/3 INTEREST AND DEREK SPIKER AND NICOLE SPIKER, HUSBAND AND WIFE, AS JOINT TENANTS AS TO AN UNDIVIDED 1/3 INTEREST AND MICHAEL SPIKER AND NANCY SPIKER, HUSBAND AND WIFE, AS JOINT TENANTS AS TO AN UNDIVIDED 1/3 INTEREST, AS TENANTS IN COMMON

4. THE LAND REFERRED TO IN THIS GUARANTEE IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

## SCHEDULE B

### EXCEPTIONS:

1. GENERAL AND SPECIAL PROPERTY TAXES, AND ANY ASSESSMENTS COLLECTED WITH TAXES, INCLUDING UTILITY ASSESSMENTS, FOR THE FISCAL YEAR 2006/2007.

TOTAL AMOUNT:	\$1,324.08
FIRST INSTALLMENT:	\$662.04
PENALTY:	\$66.20 (AFTER DECEMBER 10, 2006)
SECOND INSTALLMENT:	\$662.04
PENALTY:	\$76.20 (AFTER APRIL 10, 2007)
EXEMPTION:	\$NONE
CODE NO.:	65023
PARCEL NO.:	279-150-22

1A. SAID PROPERTY HAS BEEN DECLARED TAX-DEFAULTED FOR NON-PAYMENT OF DELINQUENT TAXES FOR THE FISCAL YEAR 2004-2006.

AMOUNT TO REDEEM PRIOR TO OCTOBER 31, 2006: \$2,378.31  
AMOUNT TO REDEEM PRIOR TO NOVEMBER 30, 2006: \$2,407.15

PARCEL NO.: 279-150-22

THE ABOVE MATTER AFFECTS THE HEREIN DESCRIBED PROPERTY AND OTHER PROPERTY.

1B. GENERAL AND SPECIAL PROPERTY TAXES, AND ANY ASSESSMENTS COLLECTED WITH TAXES, INCLUDING UTILITY ASSESSMENTS, FOR THE FISCAL YEAR 2006/2007.

TOTAL AMOUNT:	\$1,764.74
FIRST INSTALLMENT:	\$882.37
PENALTY:	\$88.23 (AFTER DECEMBER 10, 2006)
SECOND INSTALLMENT:	\$882.37
PENALTY:	\$98.23 (AFTER APRIL 10, 2007)
EXEMPTION:	\$NONE
CODE NO.:	65023
PARCEL NO.:	280-140-10

1C. SAID PROPERTY HAS BEEN DECLARED TAX-DEFAULTED FOR NON-PAYMENT OF DELINQUENT TAXES FOR THE FISCAL YEAR 2004-2006.

AMOUNT TO REDEEM PRIOR TO OCTOBER 31, 2006: \$3,158.16  
AMOUNT TO REDEEM PRIOR TO NOVEMBER 30, 2006: \$3,196.60

PARCEL NO.: 280-140-10

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

- 1D. THE LIEN OF SUPPLEMENTAL TAXES, IF ANY, ASSESSED PURSUANT TO THE PROVISIONS OF CHAPTER 3.5 (COMMENCING WITH SECTION 75) OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA.
2. THE FACT THAT THE PUBLIC ROAD DOES NOT DISCLOSE THAT THE OWNERSHIP OF SAID LAND INCLUDES RIGHTS OF ACCESS TO OR FROM ANY PUBLIC STREET. NOTWITHSTANDING THE INSURING CLAUSES OF THE POLICY, THE COMPANY DOES NOT INSURE AGAINST LOSS OR DAMAGE BY REASON OF A LACK OF A RIGHT OF ACCESS TO AND FROM THE LAND.
3. A DEED OF TRUST TO SECURE AN INDEBTEDNESS IN THE AMOUNT SHOWN BELOW AND ANY OTHER OBLIGATIONS SECURED THEREBY:

AMOUNT:	\$192,223.40
DATED:	APRIL 24, 2002
TRUSTOR:	DENNY JOHNSTON AND SHERILL JOHNSTON, HUSBAND AND WIFE, AS JOINT TENANTS AS TO AN UNDIVIDED 1/3 INTEREST AND DEREK SPIKER AND NICOLE SPIKER, HUSBAND AND WIFE AS TO AN UNDIVIDED 1/3 INTEREST AND MICHAEL SPIKER AND NANCY SPIKER, HUSBAND AND WIFE, AS JOINT TENANTS, AS TO AN UNDIVIDED 1/3 INTEREST AS TENANTS IN COMMON
TRUSTEE:	FIRST AMERICAN TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION
BENEFICIARY:	ROBERT ALLEN DAVIS, A MARRIED MAN
RECORDED:	APRIL 26, 2002 AS INSTRUMENT NO. 2002-0355530, OF OFFICIAL RECORDS

AN ASSIGNMENT OF THE BENEFICIAL INTEREST UNDER SAID DEED OF TRUST NAMES:

AS ASSIGNEE:	ROBERT A. DAVIS AND MARY CLAIRE DAVIS, AS TRUSTEE, OR THE SUCCESSOR TRUSTEE, OF THE DAVIS FAMILY TRUST DATED MAY 29, 2003
RECORDED:	OCTOBER 28, 2003 AS INSTRUMENT NO. 2003-1310281, OF OFFICIAL RECORDS

A NOTICE OF DEFAULT UNDER THE TERMS OF SAID DEED OF TRUST:

EXECUTED BY	ACTION FORECLOSURE SERVICES, INC., A CALIFORNIA CORPORATION
RECORDED	OCTOBER 18, 2006 AS INSTRUMENT NO. 06-0739357, OF OFFICIAL RECORDS

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

4. A DEED OF TRUST TO SECURE AN INDEBTEDNESS IN THE AMOUNT SHOWN BELOW AND ANY OTHER OBLIGATIONS SECURED THEREBY:

AMOUNT:	\$409,190.00
DATED:	JANUARY 7, 2005
TRUSTOR:	DENNY L. JOHNSTON
TRUSTEE:	FIRST AMERICAN TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION
BENEFICIARY:	SHERILL LYNN JOHNSTON
RECORDED:	FEBRUARY 3, 2005 AS INSTRUMENT NO. 2005-0092417, OF OFFICIAL RECORDS

5. AN ABSTRACT OF JUDGMENT IN THE AMOUNT SHOWN BELOW AND ANY OTHER AMOUNTS DUE.

ENTERED:	06/23/06
AMOUNT:	\$5,110.44
DEBTOR:	DEREK M. SPIKER
CREDITOR:	TARGET NATIONAL BANK
COUNTY:	SAN DIEGO
COURT:	SUPERIOR
CASE NO.:	IE032007
RECORDED:	AUGUST 4, 2006 AS INSTRUMENT NO. 2006-0554180, OF OFFICIAL RECORDS

6. A TAX LIEN FOR THE AMOUNT SHOWN AND ANY OTHER AMOUNTS DUE, IN FAVOR OF THE TAXING AGENCY SHOWN BELOW:

TAXING AGENCY:	STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT
AMOUNT SHOWN:	DEPARTMENT
CERTIFICATE OR	\$51,778.37
SERIAL NO.:	M 377579
TAXPAYER:	MICHAEL J. SPIKER, INDIVIDUALLY AND/OR AS CEO/PRESIDENT OF, SPIKER ELECTRIC, INC.
RECORDED:	JANUARY 6, 2006 AS INSTRUMENT NO. 2006-0013911, OF OFFICIAL RECORDS

7. A TAX LIEN FOR THE AMOUNT SHOWN AND ANY OTHER AMOUNTS DUE, IN FAVOR OF THE TAXING AGENCY SHOWN BELOW:

TAXING AGENCY:	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE
AMOUNT SHOWN:	\$151,155.77
CERTIFICATE OR	
SERIAL NO.:	294549406
TAXPAYER:	MICHAEL J SPIKER
RECORDED:	JUNE 9, 2006 AS INSTRUMENT NO. 2006-0411776, OF OFFICIAL RECORDS

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

8. A TAX LIEN FOR THE AMOUNT SHOWN AND ANY OTHER AMOUNTS DUE, IN FAVOR OF THE TAXING AGENCY SHOWN BELOW:

TAXING AGENCY: DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE  
AMOUNT SHOWN: \$151,155.77  
CERTIFICATE OR  
SERIAL NO.: 294549506  
TAXPAYER: NANCY S SPIKER  
RECORDED: JUNE 9, 2006 AS INSTRUMENT NO. 2006-0411777, OF OFFICIAL RECORDS

9. ANY BANKRUPTCY PROCEEDINGS THAT ARE NOT DISCLOSED BY THE ACTS THAT WOULD AFFORD NOTICE AS TO SAID LAND, PURSUANT TO TITLE 11, U.S.C. 549(C) OF THE BANKRUPTCY REFORM ACT OF 1978, AS AMENDED.

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

## SCHEDULE C

### INFORMATION FOR TRUSTEE

RELATIVE TO THE DEED OF TRUST SHOWN AS ITEM 3 OF THIS GUARANTEE:

1. TRUSTEE MUST OBSERVE THE REQUIREMENTS OF SECTION 2924B OF THE CALIFORNIA CIVIL CODE AS TO THE NOTICES TO BE SENT TO THE TRUSTORS. IF ADDRESSES OF THE TRUSTORS ARE NOT SHOWN IN SAID TRUST DEED, THIS CODE SECTION STATES THE PROCEDURE TO BE FOLLOWED AS TO NOTICE IN SUCH CASES. NAMES AND ADDRESSES OF TRUSTORS (IF ANY) SHOWN IN SAID DEED OF TRUST.

✓ DENNY JOHNSTON  
2625 LAS PALMAS AVENUE  
ESCONDIDO CA 92025

✓ SHERILL JOHNSTON  
2625 LAS PALMAS AVENUE  
ESCONDIDO CA 92025

✓ DEREK SPIKER  
2625 LAS PALMAS AVENUE  
ESCONDIDO CA 92025

✓ NICOLE SPIKER  
2625 LAS PALMAS AVENUE  
ESCONDIDO CA 92025

✓ MICHAEL SPIKER  
2625 LAS PALMAS AVENUE  
ESCONDIDO CA 92025

✓ NANCY SPIKER  
2625 LAS PALMAS AVENUE  
ESCONDIDO CA 92025

2. THE NAMES AND ADDRESSES OF PERSONS WHO HAVE RECORDED REQUESTS, AS PROVIDED BY SECTION 2924B(A) AND (D) OF THE CALIFORNIA CIVIL CODE, FOR A COPY OF NOTICE OF DEFAULT AND FOR A COPY OF NOTICE OF SALE ARE:

NONE.

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

3. NAMES AND ADDRESSES OF ADDITIONAL PERSONS WHO, AS PROVIDED BY SECTION 2924B(C)(1) AND (2) OF THE CALIFORNIA CIVIL CODE, ARE ENTITLED TO RECEIVE A COPY OF NOTICE OF DEFAULT AND A COPY OF NOTICE OF SALE ARE:

✓ SHERILL LYNNE JOHNSTON  
2625 LAS PALMAS AVENUE  
ESCONDIDO, CA 92025  
REGARDING ITEM NO. 4

✓ DENNY JOHNSTON  
1855 RAINBOW VALLEY BLVD.  
FALLBROOK CA 92028  
REGARDING VESTEE

✓ SHERILL JOHNSTON  
1855 RAINBOW VALLEY BLVD.  
FALLBROOK CA 92028  
REGARDING VESTEE

✓ DEREK SPIKER  
1855 RAINBOW VALLEY BLVD.  
FALLBROOK CA 92028  
REGARDING VESTEE

✓ NICOLE SPIKER  
1855 RAINBOW VALLEY BLVD.  
FALLBROOK CA 92028  
REGARDING VESTEE

✓ MICHAEL SPIKER  
1855 RAINBOW VALLEY BLVD.  
FALLBROOK CA 92028  
REGARDING VESTEE

✓ NANCY SPIKER  
1855 RAINBOW VALLEY BLVD.  
FALLBROOK CA 92028  
REGARDING VESTEE

4. NAMES AND ADDRESSES OF STATE TAXING AGENCIES WHICH, AS PROVIDED BY SECTION 2924B(C)(3) OF THE CALIFORNIA CIVIL CODE, ARE ENTITLED TO RECEIVE A COPY OF NOTICE OF SALE ARE:

✓ STATE OF CALIFORNIA  
EMPLOYMENT DEVELOPMENT DEPARTMENT  
LIEN GROUP, MIC 92G  
P.O. BOX 826880  
SACRAMENTO, CALIFORNIA 94280-0001  
REGARDING ITEM NO. 6

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

5. THE ADDRESSES OF THE INTERNAL REVENUE SERVICE WHICH, AS PROVIDED BY SECTION 2924B(C)(4) OF THE CALIFORNIA CIVIL CODE, ARE ENTITLED TO RECEIVE A COPY OF NOTICE OF SALE ARE:

LAGUNA NIGUEL DISTRICT  
INTERNAL REVENUE SERVICE  
S:C:F:TS:W:AREA 14:GROUP 15  
24000 AVILA ROAD, M/S 5905  
LAGUNA NIGUEL, CA 92677-09608

ATTN: ADVISORY UNIT  
949-360-2364 OR 949-360-2427

C. RIPP 949-389-4140  
U. CLARA 949-389-4132

- AND -

LOS ANGELES DISTRICT/AREA 16

INTERNAL REVENUE SERVICE  
STOP 5021/ADVISORY UNIT 1/RM 4062  
300 N. LOS ANGELES STREET  
LOS ANGELES, CA 90012

ATTN: TECHNICAL SUPPORT TERRITORY MANAGER

G. LAM 213-576-4584  
CONTRACT PERSON: L. A. KIRKWOOD 213-576-4456  
REGARDING ITEM NO. 7 AND 8

6. THE NAMES OF PERSONS AND ADDRESSES DISCLOSED BY THE RECORDS EXAMINED, OTHER THAN THOSE TO WHOM NOTICE IS REQUIRED BY SECTION 2924B OF THE CALIFORNIA CIVIL CODE TO BE DIRECTED, WHO MIGHT BE INTERESTED IN RECEIVING A COPY OF NOTICE OF DEFAULT AND A COPY OF NOTICE OF SALE ARE:

TARGET NATIONAL BANK  
C/O ESKANOS & ADLER  
DONALD R. STEBBINS/JANET L. BROWN  
KURTISS A. JACOBS/JEROME M. YALON 218950/84204  
2325 CLAYTON ROAD,  
CONCORD, CA 94520  
REGARDING ITEM NO. 5

CLTA GUARANTEE  
FORM NO 6282

ORDER NO. 4379835-65  
GUARANTEE NO. 201861

7. CITY IN WHICH SAID LAND IS LOCATED: FALLBROOK  
IF NOT IN CITY, JUDICIAL DISTRICT IN WHICH SAID LAND IS LOCATED:

8. LEGAL PUBLICATIONS:

ESCONDIDO NEWS

PUBLISHED: MONDAY THROUGH FRIDAY

ATTENTION IS CALLED TO SERVICEMEMBERS CIVIL RELIEF ACT OF 1940 AND AMENDMENTS THERETO AND THE MILITARY RESERVIST RELIEF ACT OF 1991 (SEC 800 TO 810, CALIFORNIA MILITARY AND VETERANS CODE) WHICH CONTAIN INHIBITIONS AGAINST THE SALE OF LAND UNDER A DEED OF TRUST IF THE OWNER IS ENTITLED TO THE BENEFITS OF SAID ACTS.

ATTENTION IS CALLED TO THE FEDERAL TAX LIEN ACT OF 1966 WHICH, AMONG OTHER THINGS, PROVIDES FOR THE GIVING OF WRITTEN NOTICE OF SALE IN A SPECIFIED MANNER TO THE SECRETARY OF TREASURY OR HIS DELEGATE AS A REQUIREMENT FOR THE DISCHARGE OR DIVESTMENT OF A FEDERAL TAX LIEN IN A NON-JUDICIAL SALE, AND ESTABLISHES WITH RESPECT TO SUCH A LIEN A RIGHT IN THE UNITED STATES TO REDEEM THE PROPERTY WITHIN A PERIOD OF 120 DAYS FROM THE DATE OF ANY SUCH SALE.

COUNTERSIGNED:



AUTHORIZED SIGNATORY

ORDER NO. 4379835-65

**Privacy Policy Notice  
(as of July 1, 2001)**

We at the North American Title family of companies take your privacy very seriously. We do not share your private information with anyone except as necessary to complete your real property, title insurance and escrow transaction.

**OUR PRIVACY POLICIES AND PRACTICES**

1. Information we collect and sources from which we collect it: We collect nonpublic personal information from you from the following sources:

- \* Information we receive from you on applications or other forms.
- \* Information about your transactions with us, our affiliates or others.
- \* Information from non-affiliated third parties relating to your transaction.

"Nonpublic personal information" is nonpublic information about you that we obtain in connection with providing a product or service to you.

2. What information we disclose and to whom we disclose it: We do not disclose any nonpublic personal information about you to either our affiliates or non-affiliates without your express consent, except as permitted or required by law. We may disclose the nonpublic personal information we collect, as described above, to persons or companies that perform services on our behalf regarding your transaction. "Our affiliates" are companies with which we share common ownership and which offer real property, title insurance, or escrow services.

3. Our security procedures: We restrict access to your nonpublic personal information and only allow disclosures to persons and companies as permitted or required by law to assist in providing products or services to you. We maintain physical, electronic, and procedural safeguards to protect your nonpublic personal information.

4. Your right to access your personal information: You have the right to review your personal information that we record about you. If you wish to review that information, please contact your local North American Title office and give us a reasonable time to make that information available to you. If you believe any information is incorrect, notify us, and if we agree, we will correct it. If we disagree, we will advise you in writing why we disagree.

5. Customer acknowledgement: Your receipt of a copy of the preliminary report, commitment, your policy of insurance, or escrow documents, accompanied by this Notice will constitute your acknowledgement of receipt of this Privacy Policy Notice.

North American Title may also share your information with an insurance institution, credit reporting agency, insurance regulatory authority, law enforcement, other governmental authority, actuary, or other research organization for purposes of detecting or preventing fraud, crimes, or misrepresentations in connection with an insurance or real estate transaction, resolving claims or service disputes, investigating suspected illegal or unlawful activities, or for conducting actuarial or research studies.

## **ATTACHMENT 8**

**Declaration of Mailing**

Trustee's Sale No. 2006623

JAMES ALLEN

I declare:

That I am an officer, agent, or employee of ACTION FORECLOSURE SERVICES, INC.

whose business address is 888 PROSPECT STREET, SUITE 201, LA JOLLA, CA 92037

I am over the age of eighteen years; On 05/15/2007 by Certified mail, enclosed in a sealed envelope with postage fully prepaid, I deposited in the United States Post Office at SAN DIEGO notices, a true and correct copy of which is hereunto attached and made part hereof, addressed to the following:

Date: 05/15/2007

Mailing: ~~Surface Mail~~ Surplus  
Page: 1 *Products*

Number of Article	Name of Addressee, Street, and Post Office Address	Cert. Fee	R.R. Fee
71006309264040366177	DENNY JOHNSTON C/O TAYLOR PIPELINE, INC. 2625 LAS PALMAS AVENUE ESCONDIDO, CA 92025	\$4.36	\$1.85
71006309264040366184	DENNY JOHNSTON 44913 SILVER ROSE STREET TEMECULA, CA 92592-5541	\$4.36	\$1.85
71006309264040366191	DEREK SPIKER 1855 RAINBOW VALLEY BLVD FALLBROOK, CA 92028	\$4.36	\$1.85
71006309264040366207	DEREK SPIKER 19773 RAMONA TRAILS DRIVE RAMONA, CA 92065	\$4.36	\$1.85
71006309264040366214	MICHAEL SPIKER 1855 RAINBOW VALLEY BLVD FALLBROOK, CA 92028	\$4.36	\$1.85
71006309264040366221	NANCY SPIKER 1855 RAINBOW VALLEY BLVD FALLBROOK, CA 92028	\$4.36	\$1.85
71006309264040366238	NICOLE SPIKER 19773 RAMONA TRAILS DRIVE RAMONA, CA 92065	\$4.36	\$1.85
71006309264040366245	SHERILL JOHNSTON 2625 LAS PALMAS AVENUE ESCONDIDO, CA 92025	\$4.36	\$1.85
71006309264040366252	NICOLE SPIKER	\$4.36	\$1.85
		\$39.24	\$16.65

Number of Pieces by Sender	Number of Pieces Received	Postmaster (Name) Receiving Employee	Mail By (Name) Sending Employee
9			<i>James Allen Jr.</i>

I certify (or Declare) under penalty of perjury under the laws of the State of CA that the foregoing is true and correct

5-15-2007  
(Date)

(Declarant)

**Declaration of Mailing**

Trustee's Sale No. 2006623

I, JAMES ALLEN, declare:

That I am an officer, agent, or employee of ACTION FORECLOSURE SERVICES, INC.

whose business address is 888 PROSPECT STREET, SUITE 201, LA JOLLA, CA 92037

I am over the age of eighteen years; On 05/15/2007 by Certified mail, enclosed in a sealed envelope with postage

fully prepaid, I deposited in the United States Post Office at SAN DIEGO notices, a true and correct copy of which is hereunto attached and made part hereof, addressed to the following:

Date: 05/15/2007

Mailing: ~~Sale Mail~~

Page: 2

Number of Article	Name of Addressee, Street, and Post Office Address	Cert. Fee	R.R. Fee
71006309264040366269	C/O THREE D ELECTRIC 1855 RAINBOW VALLEY BLVD FALLBROOK, CA 92028	\$4.36	\$1.85
71006309264040366276	DENNY JOHNSTON 2625 LAS PALMAS AVENUE ESCONDIDO, CA 92025	\$4.36	\$1.85
71006309264040366283	SHERILL JOHNSTON <sup>DVR</sup> 2625 LAS PALMAS AVENUE ESCONDIDO, CA 92025	\$4.36	\$1.85
71006309264040366290	DEREK SPIKER 2625 LAS PALMAS AVENUE ESCONDIDO, CA 92025	\$4.36	\$1.85
71006309264040366306	NICOLE SPIKER 2625 LAS PALMAS AVENUE ESCONDIDO, CA 92025	\$4.36	\$1.85
71006309264040366313	MICHAEL SPIKER 2625 LAS PALMAS AVENUE ESCONDIDO, CA 92025	\$4.36	\$1.85
71006309264040366320	NANCY SPIKER 2625 LAS PALMAS AVENUE ESCONDIDO, CA 92025	\$4.36	\$1.85
71006309264040366337	SHERILL LYNNE JOHNSTON 2625 LAS PALMAS AVENUE ESCONDIDO, CA 92025	\$4.36	\$1.85
	DENNY JOHNSTON 1855 RAINBOW VALLEY BLVD.	\$4.36	\$1.85
		\$34.88	\$14.80

Number of Pieces by Sender	Number of Pieces Received	Postmaster (Name) Receiving Employee	Mail By (Name) Sending Employee
8			<i>James M. Allen Jr.</i>

I certify (or Declare) under penalty of perjury under the laws of the State of CA that the foregoing is true and correct

5-15-2007  
(Date)

(Declarant)

**Declaration of Mailing**

Trustee's Sale No. 2006623

I, JAMES ALLEN, Jr., declare:

That I am an officer, agent, or employee of ACTION FORECLOSURE SERVICES, INC.  
 whose business address is 888 PROSPECT STREET, SUITE 201, LA JOLLA, CA 92037  
 I am over the age of eighteen years; On 05/15/2007 by Certified mail, enclosed in a sealed envelope with postage  
 fully prepaid, I deposited in the United States Post Office at SAN DIEGO  
 notices, a true and correct copy of which is hereunto attached and made part hereof, addressed to the following:

Date: 05/15/2007

Mailing: Sale Mail

Page: 3

Number of Article	Name of Addressee, Street, and Post Office Address	Cert. Fee	R.R. Fee
71006309264040366344	FALLBROOK, CA 92028		
71006309264040366351	SHERILL JOHNSTON 1855 RAINBOW VALLEY BLVD. FALLBROOK, CA 92028	\$4.36	\$1.85
71006309264040366368	NICOLE SPIKER 1855 RAINBOW VALLEY BLVD. FALLBROOK, CA 92028	\$4.36	\$1.85
71006309264040366375	TARGET NATIONAL BANK C/O ESKANOS & ADLER DONALD R. STEBBINS/JANET L. BROWN KURTISS A. JACOBS/JEROME M. YALON 218950/84204 2325 CLAYTON ROAD CONCORD, CA 94520	\$4.36	\$1.85
71006309264040366382	STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT LIEN GROUP, MIC 92G P.O. BOX 826880 SACRAMENTO, CA 94280-0001	\$4.36	\$1.85
71006309264040366399	LAGUNA NIGUEL DISTRICT INTERNAL REVENUE SERVICE S:C:F:TS:W: AREA 14: GROUP 15 24000 AVILA ROAD, M/S 5905 LAGUNA NIGUEL, CA 92677-09608	\$4.36	\$1.85
	INTERNAL REVENUE SERVICE STOP 5021/ADVISORY UNIT 1/RM 4062 300 N. LOS ANGELES STREET LOS ANGELES, CA 90012 ATTN: TECHNICAL SUPPORT TERRITORY MGR	\$26.16	\$11.10

Number of Pieces by Sender	Number of Pieces Received	Postmaster (Name) Receiving Employee	Mail By (Name) Sending Employee
6			James Allen, Jr.

I certify (or Declare) under penalty of perjury under the laws of the State of CA that the foregoing is true and correct

5-15-2007  
(Date)

(Declarant)

**Declaration of Mailing**

Trustee's Sale No. 2006623

JAMES ALLEN

*Jr.*

, declare:

That I am an officer, agent, or employee of ACTION FORECLOSURE SERVICES, INC.

whose business address is 888 PROSPECT STREET, SUITE 201, LA JOLLA, CA 92037

I am over the age of eighteen years; On 05/15/2007 by Certified mail, enclosed in a sealed envelope with postage fully prepaid, I deposited in the United States Post Office at SAN DIEGO *Proximus*  
notices, a true and correct copy of which is hereunto attached and made part hereof, addressed to the following:

Date: 05/15/2007

Mailing: ~~Safe Mail~~Page: 4 *5 envelopes*

Cert.

Fee

R.R.

Fee

Number of Article	Name of Addressee, Street, and Post Office Address	Cert. Fee	R.R. Fee
71006309264040366405	INTERNAL REVENUE SERVICE P.O. BOX 145585 STOP 8420G CINCINNATI, OH 45250-5585	\$4.36	\$1.85
71006309264040366412	INDEPENDENT ELECTRIC SUPPLY, INC. C/O CRF SOLUTIONS P.O. BOX 1389 SIMI VALLEY, CA 93062	\$4.36	\$1.85
71006309264040366429	M AND D ELECTRIC INC. A CALIFORNIA CORPORATION 19773 RAMONA TRAILS RAMONA, CA 92065	\$4.36	\$1.85
71006309264040366436	LAGUNA NIGUEL DISTRICT/AREA 16 INTERNAL REVENUE SERVICE 24000 AVILA ROAD, STOP 5905 LAGUNA NIGUEL, CA 92677 ATTN: TECHNICAL SUPPORT TERRITORY MGR ADVISOR: K. RIPP 702-868-5063	\$4.36	\$1.85
71006309264040366443	CHARLES D. NACHAND 447 SOUTH ESCONDIDO BLVD. ESCONDIDO, CA 92025	\$4.36	\$1.85
		\$21.80	\$9.25

Number of Pieces by Sender	Number of Pieces Received	Postmaster (Name) Receiving Employee	Mail By (Name) Sending Employee
5			<i>James Allen Jr.</i>

I certify (or Declare) under penalty of perjury under the laws of the State of CA that the foregoing is true and correct

5-15-2007

(Date)

(Declarant)

## **ATTACHMENT 11b**

## ATTACHMENT 11b

Petitioner alleges a potential conflict in the distribution of proceeds pursuant to Civil Code section 2924j(c).

Subsequent to a trustee's sale of real property, the proceeds from the sale must be distributed in accordance with Civil Code section 2924k. Pursuant to that statute any funds remaining after payment of the obligations secured by the deed of trust which is the subject of the trustee's sale are to be paid to satisfy any outstanding obligations secured by junior liens or encumbrances and then "to the trustor or the trustor's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale."

Petitioner conducted a Trustee's Sale of the real property located at vacant land in San Diego County on Julian Road East, Hwy. 78, under Assessors' Parcel Numbers 279-150-22 and 280-140-10 ("Subject Property"). The sale took place on May 4, 2007, under a Deed of Trust dated April 24, 2002, executed by:

Denny Johnston and Sherrill Johnston, husband and wife, as joint tenants as to an undivided 1/3 interest and Derek Spiker and Nicole Spiker, husband and wife, as joint tenants as to an undivided 1/3 interest and Michael Spiker and Nancy Spiker, husband and wife, as joint tenants as to an undivided 1/3 interest, as tenants in common.

The Deed of Trust was recorded on April 26, 2002, as Instrument No. 2002-0355530, in the official records of San Diego, California.

As of the date of the Trustee's Sale, the Subject Property was owned by the trustors, with each couple maintaining a 1/3 interest in the Subject Property. As of the date of the Trustees Sale, the following interests were recorded against the Subject Property, in the order of their priority:

1. A Deed of Trust in favor of Sherill Lynn Johnston, which was executed by Denny L. Johnston and which was recorded on February 3, 2005, as Instrument No. 2005-0092417 in the original amount of \$409,190.00.
2. An Abstract of Judgment in favor of Target National Bank against Derek M. Spiker, which was recorded on August 4, 2006, as Instrument Number 2006-0554180 in the original amount of \$5,110.44.
3. A Tax Lien in favor of the State of California Employment Development Department against Michael J. Spiker, which was recorded on January 6, 2006, as Instrument Number 2006-0013911 in the original amount of \$51,778.37.
4. A Tax Lien in favor of the Department of the Treasury - Internal Revenue Service against Michael J. Spiker, which was recorded on June 9, 2006, as Instrument

Number 2006-0411776 in the original amount of \$151,155.77.

5. A Tax Lien in favor of the Department of the Treasury - Internal Revenue Service against Nancy S. Spiker, which was recorded on June 9, 2006, as Instrument Number 2006-0411777 in the original amount of \$151,155.77.
6. An Abstract of Judgment in favor of Independent Electric Supply, Inc. against M and D Electric Supply Inc., which was recorded on November 13, 2006, as Instrument Number 2006-0804472 in the original amount of \$5,130.00.

The Petitioner received a claim to the excess proceeds of the Trustee's Sale from the Department of Treasury - Internal Revenue Service on or about May 23, 2007, in the amount of \$161,074.41, based on the tax liens against Michael J and Nancy S Spiker described in paragraphs 4 and 5 above. A true and correct copy of the claim and the supporting documents are attached hereto as **Exhibit A** and are incorporated herein by reference.

The Petitioner received a claim to the excess proceeds of the Trustee's Sale from the State of California Employment Development Department on or about June 4, 2007, in the amount of \$51,092.06, based on the tax lien against Michael Spiker described in paragraph 3 above. A true and correct copy of the claim and the supporting documents are attached hereto as **Exhibit B** and are incorporated herein by reference.

The Petitioner received a claim to the excess proceeds of the Trustee's Sale from Sherill Johnston through her attorney Charles D. Nachand on or about June 13, 2007. Sherill Johnston claims the entire amount of surplus proceeds based on the Deed of Trust executed by Denny L. Johnston, which is described in paragraph 1 above. A true and correct copy of the claim and the supporting documents are attached hereto as **Exhibit C d** are incorporated herein by reference.

The Petitioner did not receive a claim to the excess proceeds from Denny L. Johnston, the remaining four trustors under the foreclosing Deed of Trust, Target National Bank, or Independent Electric Supply, Inc.

A conflict exists because Sherill Johnston had a partial ownership interest in the Subject Property at the time she obtained the beneficial interest under the Deed of Trust executed by Denny L. Johnston. Moreover, it is unclear whether the Deed of Trust encumbers Denny Johnson's 1/6 interest in the Subject Property or both Denny and Sherill Johnstons' 1/3 interest in the Subject Property. Finally, Sherills Johnstons' claim asserts she has a right to priority distribution for payments she made in furtherance of the partnership between all trustors regarding the development of the Subject Property. Petitioner is unable to determine the validity of Sherrill Johnston's claim to the entire amount of surplus funds, as it is unclear whether her lien under the Deed of Trust merged with her title.

Based on the foregoing, the Petitioner is unable to disburse the remaining surplus proceeds of the Trustee's Sale to the listed claimants, Trustor(s) and/or to the vested owner of record at the time fo the Trustee's Sale. The Petitioner is unable to determine which party is entitled to the remaining surplus funds.

# Exhibit A



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
Washington, D.C. 20224**

Name: Action Foreclosure Services, Inc.  
 Address: 888 Prospect St., Suite 201  
La Jolla, CA 92037  
 Trustee's Sale #: 2006623  
 Attn: James M. Allen, Jr. - Chief Financial Officer

T/P's Name: Michael J (9814) & Nancy S (3417) Spiker  
Derek M (7606) Spiker  
Vacant Land at Goose Valley Ln., Ramona  
 T/P's Address: Vacant Land at Rancho Vista Dr., Ramona

A Notice of Federal Tax Lien was filed in San Diego County, CA  
 for the tax liabilities listed below: Michael J & Nancy S Spiker

Statutory Additions to: 05/04/2007						
Type of Tax	Tax Period	Identifying Number	Unpaid Balance	Interest	Penalty	Total
6672	6/30/02	xox-xx-9814	\$ 16,093.33	\$ 2,018.44	\$ -	\$ 18,111.77
6672	12/31/02	xox-xx-9814	\$ 16,871.08	\$ 2,060.85	\$ -	\$ 18,931.93
6672	3/31/03	xox-xx-9814	\$ 30,649.82	\$ 3,743.93	\$ -	\$ 34,393.75
6672	6/30/03	xox-xx-9814	\$ 30,024.23	\$ 3,667.52	\$ -	\$ 33,691.75
6672	9/30/03	xox-xx-9814	\$ 29,426.57	\$ 3,594.51	\$ -	\$ 33,021.08
6672	12/31/03	xox-xx-9814	\$ 6,286.80	\$ 767.94	\$ -	\$ 7,054.74
6672	3/31/04	xox-xx-9814	\$ 9,807.08	\$ 1,197.96	\$ -	\$ 11,005.04
6672	6/30/04	xox-xx-9814	\$ 4,334.84	\$ 529.51	\$ -	\$ 4,864.35
6672	6/30/02	xox-xx-3417	\$ 16,093.33	\$ 2,018.44	\$ -	\$ 18,111.77
6672	12/31/02	xox-xx-3417	\$ 16,871.08	\$ 2,060.85	\$ -	\$ 18,931.93
6672	3/31/03	xox-xx-3417	\$ 30,649.82	\$ 3,743.93	\$ -	\$ 34,393.75
6672	6/30/03	xox-xx-3417	\$ 30,024.23	\$ 3,667.52	\$ -	\$ 33,691.75
6672	9/30/03	xox-xx-3417	\$ 29,426.57	\$ 3,594.51	\$ -	\$ 33,021.08
6672	12/31/03	xox-xx-3417	\$ 6,286.80	\$ 767.94	\$ -	\$ 7,054.74
6672	3/31/04	xox-xx-3417	\$ 9,807.08	\$ 1,197.96	\$ -	\$ 11,005.04
6672	6/30/04	xox-xx-3417	\$ 4,334.84	\$ 529.51	\$ -	\$ 4,864.35
					Total:	\$ -

The following periods have been assessed but liens have not been filed: Derek M. Spiker

Statutory Additions to: 05/04/2007						
Type of Tax	Tax Period	Identifying Number	Unpaid Balance	Interest	Penalty	Total
6672	6/30/02	xox-xx-7606	\$ 16,093.33	\$ 1,992.07	\$ -	\$ 18,085.40
6672	12/31/02	xox-xx-7606	\$ 16,871.08	\$ 2,035.43	\$ -	\$ 18,906.51
6672	3/31/03	xox-xx-7606	\$ 30,649.82	\$ 3,697.80	\$ -	\$ 34,347.62
6672	6/30/03	xox-xx-7606	\$ 30,024.23	\$ 3,622.32	\$ -	\$ 33,646.55
6672	9/30/03	xox-xx-7606	\$ 29,426.57	\$ 3,550.22	\$ -	\$ 32,976.79
6672	12/31/03	xox-xx-7606	\$ 6,286.80	\$ 758.48	\$ -	\$ 7,045.28
6672	3/31/04	xox-xx-7606	\$ 9,807.08	\$ 1,183.19	\$ -	\$ 10,990.27
6672	6/30/04	xox-xx-7606	\$ 4,334.84	\$ 522.97	\$ -	\$ 4,857.81
					Total:	

The amount needed to release the lien is \$ 161,074.41. Total Owed: \_\_\_\_\_

A Certificate of Release of Federal Tax Lien will be issued immediately only if payment is made by: 06/15/2007

1. Cash; or 2. Certified or Cashier's check; or
3. Treasurer's check drawn on a national/ state bank or trust company; or 4. Money Order

If the payment is made in any other form, the release will be delayed for 30 days or until evidence is furnished that the funds have been transferred.

Please make payment payable to the United States Treasury and send it to:

Internal Revenue Service, Advisory Unit

24000 Avila Road, M/S. 5905

Laguna Niguel, CA 92677

Attn: D. Chambers

If you have any questions, please contact the person's whose name and telephone number appear at the bottom of this letter.

Signature D. Chambers Date: 0523/2007 Title: Group Manager, J. Carr Telephone # 949-389-4124

## Exhibit B



Arnold Schwarzenegger, Governor

June 4, 2007

Reference 415-0757-5

Action Foreclosure Services  
888 Prospect Street Suite 201  
La Jolla, CA 92037  
Attn: J. M. Allen Jr.

### **EXCESS PROCEEDS FROM TRUSTEE SALE**

Trustor	Michael J. Spiker
Trustee Sale #	2006623
Property Address:	N/A
Date Sold	04-26-02

I, the undersigned claimant, request that I be awarded the excess proceeds resulting from the sale of the above referenced property.

I claim my status as a party of interest pursuant to Section 4675 of the California Revenue and Taxation Code.

I am a rightful claimant and base my status and right to file a claim on the following information and documentation:

The Employment Development Department, State of California by its statutory power has created a lien for unpaid taxes against Michael J. Spiker San Diego County California.

CERTIFICATE	RECORDED	BK-PG	TAXES	INT/PEN	BALANCE
M377579	01-06-06	06-0013911	\$32,465.50	\$18,626.56	\$51,092.06
Assessment Date:	12-03-05	Quarters:	10-01-02 to 12-31-04		

CLAIM TOTAL: \$51,092.06

I affirm under penalty that the foregoing is true and correct.

Executed the 4<sup>th</sup> day of June 2007 in Sacramento, California.

  
\_\_\_\_\_  
L. Rebman (916) 464-2064

Special Procedures Section

Employment Development Department  
800 Capitol Mall Mic 92 H  
Sacramento, CA 94230-6203

To ensure proper application of payments, please remit a copy of this letter.

## Exhibit C

*A*

## The Law Offices of Charles D. Nachand

451 South Escondido Boulevard  
Escondido, California 92025-4813  
Telephone: (760) 741-2665  
Facsimile: (760) 741-0396

James M. Allen, Jr.  
Action Foreclosure Services  
888 Prospect Street, Suite 201  
La Jolla, California 92037

June 13, 2007

Re: Loan No. Spiker/Johnston; File No. 2006623 STATEMENT OF CLAIM

Dear Mr. Allen:

This letter with attachments constitutes the claim by Sherill Johnston for the surplus sales proceeds from the foreclosure sale and as referenced in your Notice to Potential Claimant. The following facts pertain to Ms. Johnston's claim for priority distribution of the surplus sales proceeds:

1. Sherill Johnston, Denny Johnston, Michael Spiker, Nancy Spiker, Derek Spiker, and Nicole Spiker were the record owners of fractional interests in the subject property.
2. Those individuals are members in a partnership arrangement created by oral agreement for the purchase and partial development of the property. The partnership has no outside obligations and no debts and no claim to any distribution of the surplus sales proceeds, except as to the requirements on advances identified herein (or as reserved outside of this demand below), and neither Ms. Johnston nor the partnership is liable for any outside or third party individual debts of the owners of the other fractional interests in the subject property.
3. During the ownership of the property, Ms. Johnston personally paid debts/advanced payment for the benefit of and relating to the property, with the knowledge of and at the request of the other partner/owners, which otherwise would have been paid by all of the participants, and were in excess of her personal share thereof relating to the property. She is due a priority distribution in reimbursement of those sums.
4. As part of the development of the property, an additional 20 acres of land were purchased (APN 286-182-19) in order to provide access to the subject property. Once that access had been granted, the 20 acre parcel was sold. As per the above (knowledge, notice and request) Ms. Johnston paid/advanced additional sums relating to that purchase and is entitled to priority reimbursement of that amount.
5. Ms. Johnston has obtained against Denny Johnston a money judgment, note and deed of trust secured by his interest in the subject property, which is more than sufficient to give her all right, title and interest to any distributions of any amount otherwise due to Denny Johnston. The judgment was obtained, and an abstract filed, prior to any other debts, liens or claims against Denny Johnston. Accordingly, because the amount of the judgment/note far exceeds any distribution to which Denny Johnston could be entitled, Ms. Johnson is entitled to direct payment of the one-sixth share of Denny Johnston before any payment to any other creditors of Denny Johnston.

Sherill Johnston claims the following amounts for distribution directly to her from the surplus sales proceeds which you are currently holding:

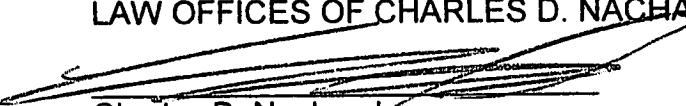
1. The amount of \$16,720.80 as a priority distribution, before payment of any other liens or debts to any person or entity or an any "share" or interest in the property as reimbursement of the sums she paid on debts of the property in excess of her liability for such debts as a one-sixth owner. Documentation of the amount claimed is attached as Exhibit A hereto.
2. The amount of \$8,420.89 as a priority distribution, before payment of any other liens or debts as reimbursement of the sums she personally paid with regard to the 20 acre parcel which was necessary for obtaining access for the subject property.
3. Her (Sherill Johnston) one-sixth share of the remainder of the surplus sales proceeds, after payment of the amounts listed in paragraphs 1 and 2 above, prior to the payment of any debts, liens or judgments of the other fractional owners.
4. The one-sixth share of Denny Johnston of the remainder of the surplus sales proceeds, after payment of the amounts listed in paragraphs 1 and 2 above, prior to the payment of any debts, liens or judgments of the other fractional owners. A copy of the Abstract of Judgment recorded on May 26, 2005, in the amount of \$409,190.00 is attached. The judgment accrues interest at the legal rate, currently the amount of \$92,749.73, for a total judgment of \$501,939.73. Copies of the Note and Deed of Trust secured by the subject property are attached.

If you intend to distribute the monies otherwise, demand is made that you provide notice in advance thereof in order to allow appropriate action on behalf of Sherill Johnston. The foregoing claims are submitted as accurate obligations and demands but may not represent the entire amount due, which further obligations are not waived to the extent that they exist outside of the scope of this demand. However, they are not made or asserted as to your sale proceeds.

On behalf of Sherill Johnston, this claim is delivered to you at the address in the Notice to Claimant no later than 30 days after the date of said notice.

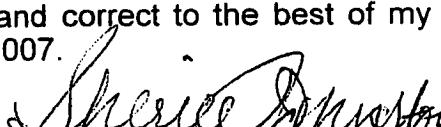
Very truly yours,

LAW OFFICES OF CHARLES D. NACHAND

  
Charles D. Nachand

CDN/km  
Enclosures

I declare that the foregoing is true and correct to the best of my knowledge. Executed at Escondido, California on June 14, 2007.

  
Sherill Johnston

DO NOT DESTROY THIS NOTE: When paid, this note and the Deed of Trust must be surrendered to the First American Title Insurance Company with request for reconveyance.

# STRAIGHT NOTE

\$ 409,190.00

San Diego

, California, January 07, 2005

On or before January 07, 2010

*Letter date,*

for value received, Denny L. Johnston

promiseS to pay

to Sherill Lynne Johnston

, or order,

at Beneficiary's Designation

the sum of FOUR HUNDRED NINE THOUSAND ONE HUNDRED AND NINETY DOLLARS AND no/100's Dollars,

*With interest from*

*Until paid, at the rate of*

*per cent, per month, payable upon sale of property located at: Julian Rd/E. Hwy 78 including  
Parcel #s 279-150-22; 280-140-10; 286-181-01 and 286-182-19; as more particularly described  
in full legal descriptions attached to this note.*

OR: January 07, 2010; whichever occurs first.

Should interest not be so paid, it shall thereafter bear like interest as the principal, but such unpaid interest so compounded shall not exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should suit be commenced to collect this note or any portion thereof, such sum as the Court may deem reasonable shall be added hereto as attorney's fees. Principal and interest payable in lawful money of the United States of America. This note is secured by a certain DEED OF TRUST to the FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, as TRUSTEE.

Denny L. Johnston

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of

San Diego

ss.

On 6-14-04

Date

before me, KRISTINE A. MEREL, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

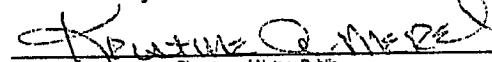
personally appeared Sherell

Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(jes), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**Title or Type of Document: Letter to James M. Allen, Jr.Document Date: 6-13-04 Number of Pages: 6

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

Individual  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney-in-Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_

RIGHT THUMBRPRINT  
OF SIGNER

Top of thumb here

Signer Is Representing: \_\_\_\_\_

Order No.  
Escrow No.  
Loan No.

## WHEN RECORDED MAIL TO:

Sherill Lynne Johnston  
2625 Las Palmas Avenue  
Escondido, CA 92025

THE ORIGINAL OF THIS DOCUMENT  
WAS RECORDED ON FEB 03, 2005  
DOCUMENT NUMBER 2005-0092417  
GREGORY J. SMITH, COUNTY RECORDER  
SAN DIEGO COUNTY RECORDER'S OFFICE  
TIME: 9:58 AM

SPACE ABOVE

## DEED OF TRUST WITH ASSIGNMENT OF RENTS (SHORT FORM)

This DEED OF TRUST, made January 07, 2005 , between

DENNY L. JOHNSTON

herein called TRUSTOR,

whose address is 521 Pine Tree Place Escondido, CA 92025  
(Number and Street) (City) (State)

FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called TRUSTEE, and

Sherill Lynne Johnston

herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the County of San Diego, State of California, consisting of 4-Parcels as follows: 279-150-22; 280-140-10; 286-181-01 & 286-182-19, County of SAN DIEGO , State of California, described as:

as more particularly described in full legal descriptions, attached hereto and made a part hereof.

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the sum of \$ 409,190.00 with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, (2) the performance of each agreement of Trustor incorporated by reference or contained herein and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book

(continued on reverse side)

and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	.99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1860	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	.93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	684	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5	Book 1964, Page 149774			

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

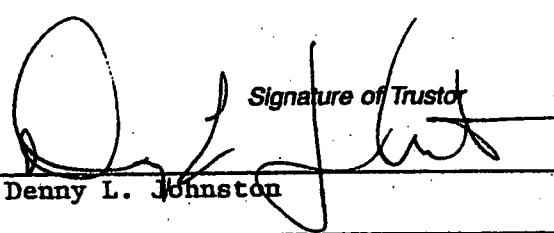
The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

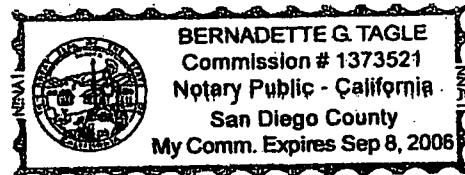
STATE OF CALIFORNIA  
COUNTY OF San Diego }  
On JANUARY 20, 2005 before me,  
BERNADETTE G. TAGLE, a Notary Public  
personally appeared DENNY L. JOHNSTON

personally known to me (or proved to me on the basis of satisfactory evidence)  
to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s) or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Signature Bernadette G. Tagle

Signature of Trustor  
  
Denny L. Johnston



(This area for official notarial seal)

(continued on next page)

EJ-001

TEL NO:

filed 489-8364

## ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address):

Recording requested by and return to:  
**Sherill Johnston**  
 2625 Las Palmas Avenue  
 Escondido, CA 92025

ATTORNEY FOR  JUDGMENT CREDITOR  ASSIGNEE OF RECORD

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**  
 HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827  
 MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105  
 FAMILY COURT, 1555 6TH AVE., SAN DIEGO, CA 92101-3294  
 KEARNY MESA BRANCH, 8950 CLAIREFONT MESA BLVD., SAN DIEGO, CA 92123-1187  
 NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-6843  
 EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3841  
 RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200  
 SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5848

PLAINTIFF: **Denny Lee Johnston**DEFENDANT: **Sherill Lynne Johnston**ABSTRACT OF JUDGMENT  Amended

MAY 26, 2005 10:04 AM

OFFICIAL RECORDS  
 SAN DIEGO COUNTY RECORDER'S OFFICE  
 GREGORY J. SMITH, COUNTY RECORDER  
 FEES: 13.00  
 PAGES: 2 NOTICES: 1

CASE NUMBER:

**DN 132 150 SDR**

FOR COURT USE ONLY

1. The  judgment creditor  assignee of record applies for an abstract of judgment and represents the following:

## a. Judgment debtor's

Name and last known address

**Denny Lee Johnston**  
 521 Pine Tree Place  
 Escondido, CA 92025

Unknown  
 Unknown

b. Driver's license No. and state: **N2331967 CA**c. Social security No.: **545-02-1358**

d. Summons or notice of entry of sister-state judgment was personally served or mailed to (name and address):

e.  Original abstract recorded in this county:

(1) Date:  
 (2) Instrument No.:

f.  Information on additional judgment debtors is shown on page two.Date: **5/19/05****Sherill Johnston**

(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT OR ATTORNEY)

2. a.  I certify that the following is a true and correct abstract of the judgment entered in this action.

b.  A certified copy of the judgment is attached.

6. Total amount of judgment as entered or last renewed:

**\$ 409.90**

3. Judgment creditor (name and address):

**Sherill Lynne Johnston**  
 2625 Las Palmas Avenue, Escondido CA 92025

7.  An  execution lien  attachment lien is endorsed on the judgment as follows:

1. Judgment debtor (full name as it appears in judgment):

**Denny Lee Johnston**

ALI

a. Amount: **\$ 409.90**

b. In favor of (name and address):

**Sherill Lynne Johnston**  
 2625 Las Palmas Avenue  
 Escondido, CA 92025

8. A stay of enforcement has

a.  not been ordered by the court.  
 b.  been ordered by the court effective until  
 (date):

9.  This judgment is an installment judgment.

## **ATTACHMENT 13**

1 JOHN D. DUNCAN (CA SBN 179560)  
2 PETER J. SALMON (CA SBN 174386)  
3 LAUREL I. HANDLEY (CA SBN 231249)  
4 PITE DUNCAN, LLP  
5 525 E. Main Street  
P.O. Box 12289  
El Cajon, CA 92022-2289  
Telephone: (619) 590-1300  
Facsimile: (619) 590-1385

6 | Attorneys for Petitioner Action Foreclosure Services, Inc.

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO - NORTH COUNTY

**IN RE:**

Case No.:

VACANT LAND LOCATED IN SAN  
DIEGO COUNTY APNS 279-150-22 AND  
280-140-10

**PROOF OF SERVICE**

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 525 East Main Street, El Cajon, California 92020.

On December 12, 2007, I served the following documents:

- 1. PETITION AND DECLARATION REGARDING UNRESOLVED CLAIMS AND DEPOSIT OF UNDISTRIBUTED SURPLUS PROCEEDS OF TRUSTEE'S SALE**
- 2. NOTICE OF PETITION TO SUPERIOR COURT TO DEPOSIT SURPLUS FUNDS**
- 3. CIVIL CASE COVER SHEET**
- 4. ORDER TO DEPOSIT SURPLUS FUNDS**

on the parties in this action addressed as follows:

Denny Johnston  
C/O Taylor Pipeline, Inc.  
2625 Las Palmas Avenue  
Escondido, CA 92025

Denny Johnston  
44913 Silver Rose Street  
Temecula, CA 92592

27 Derek Spiker  
1855 Rainbow Valley Blvd.  
28 Fallbrook, CA 92028

Derek Spiker  
19773 Ramona Trails Drive  
Ramona, CA 92065

1	Michael Spiker 1855 Rainbow Valley Blvd. Fallbrook, CA 92028	Nancy Spiker 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
3	Nicole Spiker 19773 Ramona Trails Drive Ramona, CA 92065	Sherill Johnston 2625 Las Palmas Avenue Escondido, CA 92025
5	Nicole Spiker C/O Three D Electric 1855 Rainbow Valley Blvd Fallbrook, CA 92028	Denny Johnston 2625 Las Palmas Avenue Escondido, CA 92025
7	Derek Spiker 2625 Las Palmas Avenue Escondido, CA 92025	Nicole Spiker 2625 Las Palmas Avenue Escondido, CA 92025
9	Michael Spiker 2625 Las Palmas Avenue Escondido, CA 92025	Nancy Spiker 2625 Las Palmas Avenue Escondido, CA 92025
11	Sherill Lynne Johnston 2625 Las Palmas Avenue Escondido, CA 92025	Denny Johnston 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
13	Sherill Johnston 1855 Rainbow Valley Blvd. Fallbrook, CA 92028	Nicole Spiker 1855 Rainbow Valley Blvd. Fallbrook, CA 92028
15	Target National Bank C/O Eskinos & Adler Donal R. Stebbins/Janet L. Brown Kurtiss A. Jacobs/Jerome M. Yalon 218950/84204	State of California Employment Development Department Lien Group, MIC 92G P.O. Box 826880 Sacramento, CA 94280-0001
17	2325 Clayton Road Concord, CA 94520	
19	Laguna Niguel District Internal Revenue Service S:C:F:TS:W:AREA 14:GROUP 15 24000 Avila Road, M/S 5905 Laguna Niguel, CA 92677	Internal Revenue Service Stop 5021/ Advisory Unit 1/RM 4062 300 N. Los Angeles Street Los Angeles, CA 90012 Attn: Technical Support Territory Mgr.
21	Internal Revenue Service Post Office Box 145585 Stop 8420G Cincinnati, OH 45250	Independent Electric Supply, Inc. C/O CRF Solutions Post Office Box 1389 Simi Valley, CA 93062
23	M and D Electric Inc. A California Corporation 19773 Ramona Trails Ramona, CA 92065	Laguna Nigel District/Area 16 Internal Revenue Service 24000 Avila Road, Stop 5905 Laguna Nigel, CA 92677 Attn: Technical Support Territory Mgr Advisor: K. Ripp 702-868-5063
25	Charles D. Nachand The Law Offices of Charles D. Nachand 447 South Escondido Blvd. Escondido, CA 92025	

1 Charles D. Nachand  
2 The Law Offices of Charles D. Nachand  
3 451 South Escondido Boulevard  
4 Escondido, CA 92025-4813

Employment Development Department  
800 Capitol Mall Mic 92 H  
Sacramento, CA 94230

5  **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above. I am  
6 readily familiar with the firm's practice of collection and processing correspondence for  
7 mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course  
of business. I am aware that on motion of party served, service is presumed invalid if postal  
cancellation date or postage meter date is more than one day after date of deposit for mailing  
in affidavit.

8  **BY CERTIFIED MAIL:** I placed a true copy in a sealed envelope addressed as indicated  
9 above via certified mail, return receipt requested.

10  **BY FACSIMILE:** I personally sent to the addressee's facsimile number a true copy of the  
11 above-described document(s). I verified transmission with a confirmation printed out by the  
facsimile machine used. Thereafter, I placed a true copy in a sealed envelope addressed and  
mailed as indicated above.

12  **BY FEDERAL EXPRESS:** I placed a true copy in a sealed Federal Express envelope  
13 addressed as indicated above. I am familiar with the firm's practice of collection and  
processing correspondence for Federal Express delivery and that the documents served are  
deposited with Federal Express this date for overnight delivery.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing  
15 is true and correct.

16 Executed on December 12, 2007, at El Cajon, California.

17   
18 ROSALYNN B. SALARDA  
19